THE MADRAS LAW JOURNAL

A NOTE ON GANESA VANNIAR v. K. VENGUSAMY AND OTHERS, (1978) 2 M.L.J. 393: 91 L.W. 292.

By

S. GOVINDARAJAN, B.SC., B.L., *Advocate and Government Pleader, Chidambaram.*

The facts of the case briefly stated are as follows:

" *'A'* mortgaged properties to Bank *'B'*. After *'B'* went into liquidation the Official Liquidator, filed a suit on the mortgage and in the execution sale *'C'* purchased the properties in Court-auction. During the pendency of the mortgage suit, *'A'* leased the properties to *'D'* who obstructed delivery of properties to *'C'* in pursuance of the Court sale. On application the obstruction was ordered to be removed and so *'D'* filed a suit claiming right to be in possession as a cultivating tenant. His tenancy rights were contended to be affected by *lis pendens*. The suit was dismissed. On appeal, T. Ramaprasada Rao and Ratnavel Pandian, JJ., held that *'D'* was entitled to be in possession as a cultivating tenant and the tenancy is not affected by *lis pendens*".

The learned Judges held: "The Cultivating Tenants' Protection Act is a beneficial enactment and had to be liberally construed in favour of the cultivating tenants by civil Courts whenever an occasion arises. The statutory right conferred on a cultivating tenant and which sprang from special enactment had to be respected irrespective of any right which the normal Civil Law could give to a litigant and which would when placed in juxtaposition with the right under the special enactment be opposed to and violative of it".

"If on the date when the 1st defendant sought for the removal of obstruction under the common law the plaintiff did have a vested right in him under the Act which gave him the benefit to continue in possession of the same, then the processual law available under the common law could not prevail and the special right which the plaintiff had, by reason of the protective enactment would prevail and had to be worked out liberally and beneficially in favour of the cultivating tenant":

"The plaintiff was entitled to protection under the Cutivating Tenants' Protection Act notwithstanding the factual position that the lease was granted at a time when the mortgage suit was pending and although *prima facie* it may appear that the doctrine of *lis pendens* could be attracted on the facts and circumstances of the case. Such a doctrine in the peculiar circumstances could not divest vested statutory rights".

It will be clear from a reading of the entire judgment that though their Lordships are of the opinion that the lease in favour of the tenant *'D'* will be factually affected by *lis pendens*, yet he is entitled to be protected under the provisions of the Cultivating Tenants' Protection Act.

This view I respectfully submit is not warranted on the facts of this case or even as a pure question of law. On the facts we find that the mortgagor *'A'* has created the tenancy in favour of *'D'* at a time when the mortgage proceedings were pending. This is clearly affected by *lis pendes* as their Lordships themselves find. But the further question that remains to be considered is whether *'D'* will be entitled to claim the benefits of Cultivating Tenants' Protection Act, so that he can get a statutory right as a tenant. Under section 52 of the Transfer of Property Act, any transfer of property which is the subject of *lis* cannot be made so as to affect the rights of parties under the decree. Our High Court as early as 1916 in the case of *Rama-*

sami v. *Govinda*[1], has held that a lease of immovable property during the pendency of the mortgage suit is invalid and the lessee is not entitled to resist the claim for possession by the Court-auction-purchaser. This has been uniformly followed in a number of later decisions.

The lease created by a mortgagor during the pendency of a mortgage suit is not only invalid, but he has also no right to lease as there is a statutory prohibition contained in section 52 of the Transfer of Property Act.

Under the Cultivating Tenants' Protection Act a cultivating tenant is one who carries on personal cultivation under a *tenancy agreement express or implied*. So this presupposes a legal jural relationship between the parties and the creation of a valid and enforceable tenancy agreement. A person who has no right to lease and a lease which is prohibited by the statute are of no avail. That will not confer any tenancy rights and the person will not be a cultivating tenant within the meaning of the Act.

Another important fact peculiar to the facts of this case is that on the date of creation of the lease, the tenancy was affected by *lis pendens* and the Madras Cultivating Tenants' Protection Act, came into force only 5 months thereafter. Thus on the date when the Act came into force *'D'* had in his favour a lease which was affected by *lis pendens* created by a person who was not entitled to create a lease.

The Judges relied upon the decision of the Supreme Court in *G. Ponniah* v. *N. Perumal*[2]. That case far from supporting the view held by their Lordships is actually contra.

In that case the question for consideration was whether a tenant from a life estate holder can claim tenancy rights under the Cultivating Tenants' Protection Act after the expiry of the life estate. The Supreme Court held that he could. As extracted in the judgment in discussion of Supreme Court says—"The terms of the statutory protection apply clearly to all tenancies governed by the Act irrespective of the nature of rights of the persons who leased and *so long as the lessor was entitled to create a tenancy*".

There can be absolutely no doubt that a life estate holder is entitled to create a tenancy. There is no statutory bar. The only question is whether it will enure beyond his lifetime and the Supreme Court says it will, in the case of statutory tenancies.

That is not the case here. *'A'* the mortgagor had no right and *was not entitled to create the tenancy at the time he created it* as there was the bar of *lis pendens* as provided under section 52 of the Transfer of Property Act. So on the date of coming into force of the Cultivating Tenants' Protection Act there was no valid lease and the tenancy was created by a person not entitled to create it. Therefore *'D'* would not be entitled to any benefits under the Cultivating Tenants' Protection Act and he did not get any statutory tenancy rights. He was merely a trespasser in law. The doctrine of *lis pendens* will therefore squarely apply to the facts of the case.

Even in the case of leases created by usufructuary mortgages the Supreme Court has taken the view that a tenancy right cannot be claimed after redemption—*Harihar Prasad Singh* v. *Must of Meenshi Nath Prasad*[3] and *Asa Ram* v. *Ram Kali*[4]. In fact even in *G. Ponniah's case*[5], relied on by their Lordships, the Supreme Court said, in respect of leases struck by section 76 (*a*) of Transfer of Property Act (Prudent management by mortgagees) — "such lessees are not tenants at all at the time when they are inducted on the land as tenants whatever else they may be".

In a recent decision of our High Court in *Kathaperumal Pillai* v. *Murugesam Pillai and another*[6], A. Varadarajan, J., after reviewing the entire case-law on the point has held: "Though ordinarily the act of leasing of agricultural lands might be an act of management of the property and the title to the property continued with the defendant, in a suit for specific performance until a sale

1. (1916) 31 M.L.J. 839 : 5 L.W. 443.
2. (1977) 2 M.L.J. (S.C.) 1 : (1977) 1 S.C.J. 458 : (1977) 2 An.W.R. (S.C.) 1 : (1977) 1 S.C.C. 500 : (1977) 2 S.C.R. 446 : A.I.R. 1977 S.C. 244.
3. 1956 S.C.J. 279 : 1956 S.C.R. 1 : A.I.R. 1956 S.C. 305.
4. 1958 S.C.J. 575 : (1958) 2 M.L.J. (S.C.) 32 : (1958) 2 An.W.R. (S.C.) 32 : 1958 S.C.R. 986 : A.I.R. 1958 S.C. 183.
5. (1977) 2 M.L.J. (S.C.) 1 : (1977) 1 S.C.J. 458 : (1977) 1 An.W.R. (S.C.) 1 : A.I.R. 1977 S.C. 244.
6. (1976) 2 M.L.J. 349.

deed has been obtained in that suit in pursuance of a decree obtained by him, having regard to the fact that certain rights in agricultural lands had been conferred on tenants by Tamil Nadu Cultivating Tenants' Protection Act, a lease in such a case would be affected by the doctrine of *lis pendens* under section 52 of the Transfer of Property Act. Therefore the lease granted by the defendant in the suit for specific performance during the pendency of such suit would be hit by section 52.

So both on the question of fact and law '*D*' cannot claim any tenancy rights and the lease in his favour is certainly hit by *lis pendens*.

For the foregoing reasons I respectfully submit that this decision requires reconsideration.

APPLICABILITY OF PROVISIONS OF FAIR RENT ACT IN THE COMPUTATION OF ANNUAL RENTAL VALUE FOR ASSESSMENT TO HOUSE-TAX IN THE STATE OF TAMIL NADU.

By

R. Thillai Villalan, *Madras*.

For the purpose of fixing annual rental value for the assessment to house-tax in our State, we have to consider the following provisions of the Acts mentioned below:—

Section 100 of the Madras City Municipal Corporation Act runs as follows:—

100. *Method of assessment of property tax.*—(1) Every building shall be asssssed together with its site and other adjacent premises occupied as appurtenances thereto unless the owner of the building is a different person from the owner of such site or premises.

(2) The annual value of lands and buildings shall be deemed to be the gross annual rent at which they may (at the time of assessment) reasonably be expected to let from month to month or from year to year (less a deduction in the case of buildings, of 10 per cent. of that portion of such annual rent which is attributable to the buildings alone, apart from their sites and the adjacent lands occupied as an appurtenance thereto), and the said deduction shall be in lieu of all allowance for repairs or on any other account whatever:

Provided that—

(*a*) in the case of

(i) any Government or railway building; or

(ii) any building of a class not ordinarily let the gross annual rent of which cannot in the opinion of the Commissioner be estimated

the annual value of the premises shall be deemed to be six per cent. of the total of the estimated market value of the land at the time of assessment and the estimated cost or erecting the building at such time after deducting for depreciation a reasonable amount which shall in no case be less than ten per centum of such cost; and

(*b*) machinery (and furniture) shall be excluded from valuation under this section:

Provided further that where the annual value of any land or building is attributable partly to the use of such land or building or any portion thereof for the display of any advertisement or advertisements and tax is levied under this Act in respect of such advertisement or advertisements, the annual value of such land or building for the purpose of assessing the property tax thereon shall be ascertained as if such land, building or portion is not used for the display of advertisement or advertisements.

(3) The (State) Government shall have power to make rules regarding the manner in which the person or persons by whom and the intervals at which the value of the land, the present cost of erecting the building and the amount to be deducted for depreciation, shall be estimated or revived in any case or class of cases to which clause (*a*) of the first proviso to sub-section (2) applies, and they may, by such rules, restrict or modify the application of the provisions contained in Schedule IV to such case or class of cases.

Section 121 of the Madurai City Municipal Corporation Ordinance states:—

121. *Method of assessment of property tax.*—(1) Every building shall be assessed together with its site and other adjacent premises occupied as an appurtenance thereto unless the owner of the building is a different person from the owner of such site or premises.

(2) The annual value of lands and buildings shall be deemed to be the gross annual rent at which they may reasonably be expected to let from month to month or from year to year less a deduction in the case of building of 10 per cent. of that portion of such annual rent which is attributable to the buildings alone, apart from their sites and the adjacent lands occupied as an appurtenance thereto; and the said deduction shall be in lieu of all allowances for repairs or on any other account whatever:

Provided that—

(*a*) in the case of—

(i) any Central or State Government or Railway building; or

(ii) any building of a class not ordinarily let the gross annual rent of which cannot, in the opinion of the Commissioner be estimated, the annual value of the premises shall be deemed to be six per centum of the total of the estimated market-value of the land and the estimated present cost of erecting the building after deduction for depreciation a reasonable amount which shall in no case be less than ten per centum of such cost;

(*b*) in calculating the value of any land or building, the value of any plant, machinery on such land or in such building shall be excluded, but all fixtures including which and electric and other fittings which add to the convenience of the building shall be valued, subject in the case of a lift to such deduction from the valuation as may be prescribed by the Council on account of the cost of repairs to maintenance of and attendance on, such lift:

Provided further that where the annual value of any land or building is attributable partly to the use of such land or building or any portion thereof for the display of any advertisement or advertisements and tax is levied under this Ordinance in respect of such advertisement or advertisements the annual value of such land or building for the purpose of assessing the property tax thereon shall be ascertained as if such land, building or portion is not used for the display of such advertisement or advertisements.

(3) The Government shall have power to make rules regarding the manner in which, the person or persons by whom and the intervals at which, the value of the land, the present cost of erecting the building and the amount to be deducted for depreciation, shall be estimated or revised, in any case or class of cases to which clause (*a*) of the proviso to sub-section (2) applies, and they may, by such rules, restrict or modify the application of the provisions contained in Schedule II to such case or class of cases.

Section 81 of the Madras District Municipalities Act is similar to the above said sections. It provides:—

81-A. *Levy of property tax on a direction by Government.*—(1) The (State Government) may by order published in the Official Gazette, direct any Municipal Council to levy the property tax referred to in sub-section (1) of section 78 or any class of such tax, at such rate and with effect from such date (not being earlier than the first day of the half-year immediately following that in which the order is published) as may be specified in the order.

(2) When an order under sub-section (1) has been published, the provisions of this Act relating to property tax shall apply as if the Municipal Council had on the date of publication of such order by resolution determined to levy the tax at the rate and with effect from the date specified in the order and as if no other resolution of the Council under section 78 determining the rate at which and the date from which property tax shall be levied had taken effect.

(3) A Municipal Council shall not alter the rate at which the property tax or any class of such tax is levied in pursuance of an order under sub-section (1) or abolish such tax except with the previous sanction of the (*State Government*) (Inserted by Madras Act VIII of 1944).

Section 120 of the Madras Panchayats Act, 1958, also is in the same line:

120. *House-tax*.—(1) The house-tax shall be levied on all houses in every village and town on the basis on which such tax was levied in the local area concerned immediately before the commencement of this Act:

Provided that the Government may by rules prescribe that the tax shall be levied on the basis of classified plinth area or on the basis of annual rent value or capital value or on a combination of any two or more of the above bases.

(2) The house-tax shall, subject to the prior payment of the land revenue, if any, due to the Government in respect of the site of the house, be a first charge upon the house and upon the movable property, if any found within or upon the same and belonging to the person liable to such tax.

(3) The house-tax shall be levied every half-year at such rates as may be fixed by the Panchayat, not being less than the minimum rates and not exceeding the maximum rates specified in Schedule I in regard to the basis of levy adopted by the Panchayat.

(4) The Government may make rules providing for—

(*i*) the manner of ascertaining the annual or capital value of house or the categories into which they fall for the purposes of taxation;

(*ii*) the persons who shall be liable to pay the tax and the giving of notices of transfer of houses;

(*iii*) the grant of vacancy and other remissions;

(*iv*) the circumstances in which, and the conditions subject to which, houses constructed, reconstructed or demolished, or situated in areas included in or excluded from the village or town, during any half-year shall be liable or cease to be liable to the whole or any portion of the tax.

(5) If the occupier of a house pays the house-tax on behalf of the owner thereof, such occupier shall be entitled to recover the same from the owner and may deduct the same from the rent then or thereafter due by him to the owner;

The present legal position of the method of assessment has to be gathered from the following authorities starting from the year 1924 to 1978: *Popular Assessment Committee* v. *Roberts*[1]; *Municipal Corporation of Rangoon* v. *Surah Bark Bazaar Company Ltd.*[2]; *Corporation of Calcutta* v. *Ashutosh De*[3]; *Provincial Treasurer, Alberta* v. *Kerr*[4]; *Secretary of State* v. *Municipal Commissiner of the City of Madras*[5]; *Motiram Kesavadas* v. *Ahmedabad Municipal Borough*[6]; *M. S. M. Rly. & Co. Ltd.* v. *Bezwada Municipality*[7]; *Ralla Ram* v. *Province of East Punjab*[8]; *Bengal Nagpur Rly. & Co., Ltd.* v. *Corporation of Calcutta*[9]; *Gulam Ahamed Rogoy* v. *Municipal Corporation of City of Bombay*[10]; *Borough Municipality, Amalner* v. *Pratap Spinning, Weaving and Manufacturing Co., Ltd, Amalner*[11]; *Madurai Municipality* v. *Kamatchi Sundaram*[12]; *Lokamanya Mills Barsi Ltd.* v. *Barsi Borough Municipality*[13]; *Corporation of Calcutta* v. *Podbi Debi*[14]; *R. C. Jall* v. *Union of India*[15]; *Patel Gordhandas Hargovindas* v. *Municipal Commissioner, Ahmadabad*[16]; *Corporation of Calcutta* v. *Life Insurance Corporation of India*[17]; *Guntur Municipal Council* v. *Rate Payers Association*[18]; *Municipal Corporation of Greater Bombay* v. *Polychem Ltd.*[19]; *New Delhi Municipal Committee* v. *M. N. Soi and onther*[20]; *Indore Municipality*

1. (1922) 2 A. C. 93.
2. A.I.R. 1924 Rangoon 194.
3. A.I.R. 1927 Cal. 639.
4. (1933) A.C. 710.
5. (1887) I.L.R. 10 Mad. 38.
6. A.I.R. 1942 Bom. 177.
7. 71 I.A. 118 : (1944) 2 M.L.J. 25 : A.I.R. 1944 P.C. 71.
8. (1949) 1 M.L.J. 213 : A.I.R. 1949 F.C. 81.
9. (1947) 2 M.L.J. 106 : A.I.R. 1947 P.C. 50.
10. A.I.R. 1951 Bom 320.
11. A.I.R. 1952 Bom. 401.
12. I.L.R. (1956) Mad. 530 : (1955) 2 M.L.J. 369 : A.I.R. 1956 Mad. 49.
13. (1962) 1 S.C.J. 123 : A.I.R. 1961 S.C. 1358.
14. (1962) 3 S.C.R. 49 : A.I.R. 1962 S.C. 151.
15. A.I.R. 1962 S.C. 1281.
16. (1964) 2 S.C.R. 608 : (1965) 1 S.C.J. 15: A.I.R. 1963 S.C. 1742.
17. (1971) 1 S.C.J. 730 : (1971) 1 S.C.R. 248 : A.I.R. 1970 S.C. 1417.
18. (1971) 2 S.C.J. 142 : (1971) 2 S.C.R. 423 : A.I.R. 1971 S.C. 353.
19. (1974) 2 S.C.J. 502 : (1974) 3 S.C.R. 687 : A.I.R. 1974 S.C. 1779.
20. (1977) 1 S.C.R. 731 : A.I.R. 1977 S.C. 302.

v. *Ratnaprobha*[21]; *R. R. Dalavai* v. *The Government of Tamil Nadu by the Secretary to Government R. D. and L. A. Department, Madras and another*[22]; *K. M. Abdul Hasan* v. *The Tiruvarur Municipality by its Commissioner, Municipal Office, Tiruvarur*[23]; *S. Ramasamy* v. *The Commissioner, Corporation of Madras*[24].

Important and relevant portions in the selected judgments about 'rate' 'standard rate' application of provisions of Rent Act 'method of assessment' and 'Municipal Taxation System' are given below. The decisions were rendered under various Corporation and Municipal Acts and also House Rent Control Acts of various States in our country.

In *Motiram* v. *Ahmedabad Municipality*[25], "rate" is defined. A lump sum imposed arbitrarily by the application Committee on certain traders and not on the District generally, and not depending on the value of the property assessed is not a rent.

In *M. S. M. Railway* v. *Bezwada Municipality*, the method of calculating or arriving at annual value of the property is considered. The proviso to section 92 (2) of Madras District Municipalities Act, does not say that the method of arriving at annual value by taking a percentage of capital value is to be utilised only in the case of classes of the buildings to which the proviso applies. It leaves the substantive enactment in the sub-section unqualified in so far as concerns the particular subjects to which the proviso relates. Hence a Municipal Council is not precluded by the proviso to section 82 (2) from adopting a percentage of the capital value of the vacant lands of a Railway Company lying within the Municipal limits as a method of ascertaining their annual value for the purpose of imposition of property tax merely by the reason of the fact that this method which is one of the recognised methods of ascertaining the annual rent likely to be paid by a hypothetical tenant referred to in the substantive part of section 82 (2) is specifically enjoyed in the particular instances mentioned in the proviso and that the said Railway lands are not included in those instances.

In *Ralla Ram* v. *The Province of East Punjab*[2], it was held that item 42 of the List II deals with taxes on lands and buildings, hearths, and windows; there are no words in the Act to suggest that the tax is to be paid only by the occupier and not by the owner and it is wholly wrong to read into item 42 words which do not occur there and thereby to limit the scope and meaning of the expressions used.

The mere fact that the words "hearths and windows occur" along with the words "lands and buildings" in item 42, does not indicate that they must all be necessarily read together, and that tax on lands and buildings must be of the same nature and incidence as the tax on hearths and windows. It is quite conceivable that the tax on buildings may be levied on the owner, whereas the tax on hearths and windows may be levied on the occupier and *vice versa*.

Wherever the annual value of the property is the basis of a tax, that tax does not necessarily become a tax on income. There are other factors to be taken into consideration. It is the essential nature of the tax charged and not the nature of the machinery which is to be looked at.

In *Gulam Ahmed* v. *Bombay Municipality*[3], it has been held that in arriving at the rateable value, for purposes of section 154 (1), City of Bombay Municipal Act, 1888, of property to which the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 applies the maximum value to be assigned to the property is not to be limited to the maximum standard rent of the property together with the additions thereto permitted by the latter Act.

---

21. (1977) 1 S.C.R. 1017 : A.I.R. 1977 S.C. 308.
22. 91 L.W. 110 : (1978) 1 M.L.J. 93.
23. 91 L.W. 61 : (1978) 1 M.L.J. 121.
24. (1977) 2 M.L.J. 457 : 90 L.W. 713 : A.I.R. 1978 Mad. 141.
25. A.I.R. 1942 Bom. 177.
1. 71 I.A. 113 : (1944) 2 M.L.J. 25 : A.I.R. 1944 P.E. 71.
2. (1949) 1 M.L.J. 213 : A.I.R. 1949 F.C. 81.
3. A.I.R. 1951 Bom. 320.

The rent which has got to be determined under section 154 (1), Bombay Municipal Act, is not the actual rent paid but is really a hypothetical figure. It has no reality, except of course, that the rates are to be based upon it. The figure is really speaking the value of the beneficial occupation to the rent. That value ignores any statutory restrictions upon the levying of rent in excess of the standard rent and permissible increases. Hence the fact that the Rent Act makes it penal for the landlord to levy anything more than the standard rent cannot make any difference in ascertainment of the figure of the hypothetical rent.

In *Borough Municipality, Amalner* v. *Pratab Spinning, Weaving and Manufacturing Co. Ltd., Amalner*[4], it has been held that Statutes which impose pecuniary burdens are subject to the rule of strict construction applied in cases where it is doubtful whether the taxing Act really touches the person or the subject taxed. But the same approach will have to be adopted if it is found that power is conferred upon a local body, to levy taxes on condition that the local body follows the procedure prescribed by the Act before levying such a tax. In other words, if the provisions of the Act in effect emphasise that compliance with the preliminary procedure amounts to a condition precedent before the levy of tax, it would not be open to the local body to contend that the tax levied by it or the rule framed by it in that behalf should be benevolently construed and its failure to comply with the preliminary procedure should be condoned. The question as to whether the strict or the benevolent rule of construction should be adopted will always depend upon the nature of the rule or by-law in question and the nature of the attack levelled against it.

The provisions of sections 78 to 81 must be read as a whole and the liability to pay the rates arises only when all these provisions have been complied with. It is hardly necessary to emphasize the importance of giving an opportunity to the assessee to make their objections under section 81 and of giving him an opportunity to press for his objections before the Standing Committee. It is only when the assessee is enabled to avail himself of this safeguard that the list can be finalised and authenticated. A provisional list prepared *ex parte* under section 78, without complying with sections 80 and 81 by the Chief Officer, or any other Municipal servant under his directions cannot be treated as either final or effective and valid.

Failure of the Municipality to comply with section 78 (1) would be enough to make the assessment list so defective as to be unenforceable.

If the rules are *ultra vires*, the fact that they have not been challenged at the preliminary stage or even that they had not been challenged during all the time that they have been in force since 1929 would not help the Municipality; but in dealing with the argument that the rule is arbitrary or capricious this fact is not wholly irrelevant. Rule is not *ultra vires* on the ground that it permits of a very large increase in the tax payable by the factory buildings.

The method of fixing rates by reference to the extent of the property is not unknown to the law of rating and the Municipality would be justified in adopting this method if they came to the conclusion that it yielded a satisfactory result in deciding what rent the hypothetical or imaginary tenant would pay in respect of these buildings. It would of course be better if the Municipality leads some evidence to show what calculations they made and how they worked out the case of the hypothetical tenant before they arrived at a particular rule. But, the Court would not be justified in declaring the rule *ultra vires* unless it is satisfied that the rule is so completely inconsistent with the basis of the annual letting value that it must be held to be invalid. It is for the plaintiff who challenges the rule to show how it is *ultra vires*.

Under section 58 (*j*) it is competent to the Municipal Borough to make rules as to the time at which and the mode in which taxes shall be levied or recovered or be payable. The expression "the mode in which taxes shall be levied" may well include the steps which are necessary to be taken in ascertaining the valuation of the properties and determining

---

4. A.I.R. 1952 Bom. 401.

the tax payable in respect of them. There is, therefore, no doubt that it would be perfectly competent to the Municipality to make a rule providing for the basis in ascertaining the valuation of the building and this basis is either the capital value or the annual letting value. Apart from section 58 (*j*) it would be perfectly competent to the Municipality to lay down principles for the guidance of its officers in preparing the assessment list under section 78.

Rule 3 (2), Amalner Municipal Borough General Property (Consolidated Tax) Rules, was therefore *intra vires*.

In *Madurai Municipality* v. *Kamakshisundaram*[5], it has been held as follows:

"The provisions of section 82 read with rules 6, 8 and 23 of Schedule IV of the Madras District Municipalities Act V of 1920 make it clear—

(1) that the executive authority has the power to fix the rental value of any premises for the purpose of levy of property tax.

(2) that the value so fixed when entered in the assessment books, is the basis of the levy of the property tax;

(3) that without an amendment of the assessment the tax cannot be altered, and

(4) that even an amendment has only a limited retrospective operation."

"There cannot be a refund of a tax paid under an assessment which had become final and which was certainly not illegal, when it was imposed and collected.

Thus, where the Municipality demands and collects from the owner of a house property tax based on a rental value calculated on the basis of the rent which was actually being paid by the tenant but subsequently on an application by the tenant the Rent Controller fixes the fair rent of the house at a reduced rate with the result that the rental value is also reduced, then the landlord cannot claim a refund of the tax from the Municipality on the ground that because a fair rent was fixed under the Rent Control Order subsequently and under one of the provisions of that order such fixation operates retrospectively as between the landlord and the tenant, it must be deemed that the rental value fixed by the Municipality for the years in question was wrongly computed and therefore a larger amount of tax was collected than was lawfully due.

The provision under the Rent Control Order and Act which makes the landlord liable to repay the amount of rent collected by him in excess of the fair rent fixed, cannot have general application. To such a case, section 72, Contract Act, can have no application because neither the Municipality nor the assessee was under any mistake as to the tax payable, and the tax was voluntarily paid.

Though the fair rent fixed under the House Rent Control Act may, and ordinarily should, be taken into consideration by the Municipal authorities in computing the annual value under section 82, they are not bound to take such fair rent as necessarily the rent for which the premises may reasonably be expected to be let, within the meaning of section 82 of the Madras District Municipalities Act."

In *Lokmanya Mills, Barsi, Ltd.* v. *Barsi Borough Municipality, Barsi*[6], it has been held as follows:

"Rule 2-C framed by the Barsi Municipality under section 58 (*j*) of the Act for assessing house tax and water tax in respect of factory buildings and buildings relating thereto on a rental value computed on the floor area of the structures and not on the capital value or on the annual rent for which the buildings may reasonably be expected to let is illegal and *ultra vires*. By section 78, sub-section (1), clause (*d*) and *Explanation* to section 75, the rate to be levied on lands and buildings may be assessed on the valuation of the lands and buildings based on capital or the annual letting value. If the rate is to be levied on the basis of capital value the building to be taxed must be valued according to some recognised method of valuation; if

5. I.L.R. (1956) Mad. 530: (1955) 2 M.L.J. 369: A.I.R. 1956 Mad. 49.

6. (1962) 1 S.C.J. 1231: A.I.R. 1961 S.C. 358.

the rate is to be levied on the basis of the annual letting value, the building must be valued at the annual rental which a hypothetical tenant may pay in respect of the building. By prescribing valuation computed on the area of the factory building, the Municipality not only fixed arbitrarily the annual letting value which bore no relation to the rental which a tenant may reasonably pay, but rendered the statutory right of the tax-payer to challenge the valuation illusory. An assessment list prepared under section 78 before it is authenticated and finalised must be published and the tax-payers must be given an opportunity to object to the valuation. By the assessment list in which the valuation is not based upon the capital value of the building or the rental which the building may fetch, but on the floor area, the objection which the tax-payers may raise is in substance restricted to the area and not to the valuation.

In *Corporation of Calcutta* v. *Sm. Padma Debi*[7], it has been held:—"Under section 127 (*a*), Calcutta Municipal Act, the value of the property to the owner is the standard in making the assessment hereunder. Though the word 'reasonably' in section 127 (*a*) is not capable of precise definition it signifies 'in accordance with reason'. In the ultimate analysis it is a question of fact. Whether a particular act is reasonable or not depends on the circumstances in a given situation. A combined reading of the provisions of sections 2 (10) (*b*), 3 and 33 (*a*) of the Rent Control Act leaves no room for doubt that a contract for a rent is not only not enforceable but also that the landlord would be committing an offence if he collected a rent above the rate of the standard rent. One may legitimately say under those circumstances that a landlord cannot reasonably be expected to let a building for a rent higher than the standard rent. A law of the land with its penal consequences cannot be ignored in ascertaining the reasonable expectations of a landlord in the matter of rent. In this view, the law of the land must necessarily be taken as one of the circumstances obtaining in the open market placing an upper limit on the rate of rent for which a building can reasonably be expected to let. It is true that section 127 (*a*) does not contemplate the actual rent received by a landlord but a hypothetical rent which he can reasonably be expected to receive if the building is let. But hypothetical rent may be described as a rent which a landlord may reasonably be expected to get in the open market. In that situation, a statutory limitation of rent circumscribes the scope of the bargain in the market. In no circumstances the hypothetical rent can exceed that limit. The omission of a specific provision, as in section 26 of the Calcutta Rent Act of 1920, prohibiting the Calcutta Corporation from making assessment of any rent higher than the rent fixed by the Rent Controller in the subsequent Acts does not inevitably lead to the conclusion that the omission implies the conferment of such a power. No implied prohibition can be drawn from the history and value under section 127 (*a*) of the Act cannot be fixed higher than the standard rent under the Rent Control Act."

In *Patel Gordhandas Hargovindas and others* v. *The Municipal Commissioner, Ahmedabad and another*[8], it has been held as follows:

"*Per majority*: Rule 350-A framed by the Municipal Corporation of Ahmedabad for rating open lands read with rule 243 is *ultra vires*. Sections 73 and 75 inasmuch as it permits the fixation of rate at percentage of capital value of the lands and not on their annual value. The assessment list prepared in that manner under rule 350-A must also be struck down as *ultra vires* the Act. The kind of tax which section 73 (1) (*i*) empowers the municipality to impose on lands and buildings is a rate on lands and buildings and the use of the word "rate" in clause (*i*) must be given its due significance. By the time when the Municipal Boroughs Act was passed in 1925 the word 'rate' had acquired special meaning in English legislative history and practice and also in Indian legislation where that word was used, and it meant a tax for local purposes imposed by local authorities and the

7. (1962) 3 S.C.R. 49 : A.I.R. 1962 S.C. 151.

8. (1965) 1 S.C.J. 15 : (1964) 2 S.C.R. 608 : A.I.R. 1963 S.C. 1742.

basis of the tax is the annual value of the lands or buildings on or in connection with which it is imposed by the local authorities arrived at in any one of the following three ways, namely, (1) actual rent fetched by land or building where it is actually let, (2) where it is not let, rent based on hypothetical tenancy, particularly in the case of buildings and (3) where either of these two modes is not available, by valuation based on capital value from which annual value has to be found by applying a suitable percentage which may not be the same for lands and buildings. Therefore, when in 1925, section 73 (1) of the Act, while specifying taxes which could be imposed by a municipal borough, used the word 'rate' on buildings or lands situate within the municipal borough, the word 'rate' must have been used in that particular meaning which it had acquired in the legislative history both in India and England before that date. The matter might have been different if the words in clause (*i*) of that section were "a tax on buildings or lands or both situate within the municipal borough for then the word 'tax' would have a wide meaning and would not be confined to any special meaning". But the use of the word 'rate' in that clause definitely means that it is that particular kind of tax which in legislative history and practice was known as a 'rate' which the municipality could impose and not any other kind of tax. It is true that by virtue of the *Explanation* to section 75, it is open to the municipality in the case of lands, to use two bases of valuation namely, either capital or annual letting value. But that does not mean that because the municipality is empowered to use capital as one basis of valuation, it has been empowered when fixing a rate to fix it as so much percentage of the capital value. That explanation carries only the meaning which is in accordance with the practice in England and hence it only means that in order to arrive at the annual value for purposes of levying a rate which is a tax on the annual value, the municipality may use the capital value and then a percentage thereon to arrive at the annual value. This would be in accordance with the third way of arriving at annual value referred to above.

Mathematically, it may be possible to arrive at the same rate of amount payable by an occupant of land, whether the rate is fixed at a particular percentage of the annual value. But this identity would not make any difference to the invalidity of the method of fixing the rate on the capital value directly. If the law enjoins that the rate should be fixed on the annual value of lands and buildings, the municipality cannot fix it on the capital value, and then justify it on the ground that the same result could be arrived at by fixing a higher percentage as the rate in case it was fixed in the right way on the annual value. By levying it otherwise directly at a percentage of the capital value, the real incidence of the rate is camouflaged, and the electorate not knowing the true incidence of the tax may possibly be subjected to such a heavy incidence as in some cases may amount to confiscatory taxation. It follows therefore that as the tax is to be levied under rule 350-A read with rule 243 directly as a percentage of the capital value it is to be struck down as *ultra vires* the Act and the assessment based in that manner must be struck down as *ultra vires*."

In *Corporation of Calcutta* v. *Life Insurance Corporation of India*[9], it has been held as follows:

"In determining the gross annual rent at which the land or building might at the time of assessment reasonably be expected to let from year to year, the statutory limitation of rent circumscribes the scope of the bargain in the market and in no circumstances the hypothetical rent may exceed the limit. In determining the annual value of the land or building for the purpose of ascertaining the consolidated rate, therefore the standard rent is the maximum amount which can be taken into account. It cannot be said that the gross rent for which the land or building might reasonably be expected to let is subject to the maximum limit of the annual standard rent, only in those cases in which standard rent under section 9 of the West Bengal Premises Rent Control (Temporary Provisions) Act, 1950 is fixed by order of the Controller, as envisaged by the proviso to section 168, and that where no such standard rent is fixed by order of the Controller, the assessing authority is in determining the annual value, competent to take into account all relevant cir-

9. (1971) 1 S.C.J. 730 : (1971) 1 S.C.R. 248 : A.I.R. 1970 S.C. 1417.

cumstances including the rent at which the premises were or could be sub-let. Even if there is no order of the Controller fixing standard rent under section 9, the standard rent stands determined by the definition of that expression in section 2 (10 (b) of that Act. Under the Act the quantum of the consolidated rate depends upon the annual value of land or building on the gross rent for which the land or building might reasonably be expected to let, and not the gross rent at which the subordinate interest of a tenant may be expected to sub-let. In determining the assessment of annual value, the assessing authority is not concerned with the rent which the tenant may receive from his sub-tenant. It is the gross rent which the owner may realise by letting the land or building under a bargain uninfluenced by extraneous consideration which determine the annual value. Section 193 only provides for apportionment of consolidated rates. It is irrelevant in determining annual value."

In *Guntur Municipal Council* v. *Guntur Town Rate-payers' Association*[10], it was held:—

"The only point which we are called upon to decide is whether before the fixation of a fair rent of any premises the municipality was bound to make assessment in the light of the provisions contained in the Rent Acts. A subsidiary question has also arisen whether the Courts below were justified in referring to and passing the decrees keeping in view the Rent Acts which were in force prior to the enactment of the Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960, hereinafter called the "Act". Now section 82 (2) of the Municipalities Act, as stated before, makes provision for the fixation of annual value according to the rent at which lands and buildings may reasonably be expected to be let from month to month or from year to year less the specified deduction. The test essentially is what rent the premises can lawfully fetch if let out to a hypothetical tenant. The municipality is thus not free to assess any arbitrary annual value and has to look to and is bound by the fair or the standard rent which would be payable for a particular premises under the Rent Act in force during the year of assessment. In *Corporation of Calcutta* v. *Smt. Padma Debi*[11], it was held that on a fair reading of the express provisions of section 127 (a) of the Calcutta Municipal Act, 1923, the annual rent could not be fixed higher than the standard rent under the Rent Control Act. There the Rent Control Act of 1950 came into force before the assessment was finally determined and it was observed that the corporation had no power to fix the annual valuation of the premises higher than the standard rent under that Act. The learned counsel for the appellant has not made any attempt nor indeed he could do so to contest the above view. What has been stressed by him is that section 7 of the Act makes it clear that it is only after the fixation of the fair rent of a building that the landlord is debarred from claiming or receiving the payment of any amount in excess of such fair rent. It is urged that so long as the fair rent of a building or premises is not fixed the assessment of valuation by a municipality need not be limited or governed by the measure provided by the provisions of the Act for determination of fair rent. Logically such buildings or premises as are not let out to a tenant and are in the self-occupation of the landlord would also fall within the same principle if no fair rent has even been fixed in respect of them.

We are unable to agree that on the language of section 82 (2) of the Municipalities Act any distinction can be made between buildings the fair rent of which has been actually fixed by the Controller and those in respect of which no such rent has been fixed. It is perfectly clear that the landlord cannot lawfully expect to get more rent than the fair rent which is payable in accordance with the principles laid down in the Act. The assessment of valuation must take into account the measure of fair rent as determinable under the Act. It may be that where the Controller has not fixed the fair rent the municipal authorities will have to arrive at their own

10. (1971) 2 S.C.J. 142: (1971) 2 S.C.R. 423: A.I.R. 1971 S.C. 353.

11. (1962) 3 S.C.R. 49: A.I.R. 1962 S.C. 151.

figure of fair rent but that can be done without any difficulty by keeping in view the principles laid down in section 4 of the Act for determination of fair rent. This would of course be with regard to the assessment of valuation for the period subsequent to the coming into force of the Act. For the prior period it would be the rent Act in force during the year of assessment in the light of the provisions of which the figure of the fair rent would have to be determined and assessment made accordingly.

There is a good deal of confusion in the judgments of the trial Court and the first appellate Court with regard to the Rent Acts the provisions of which would have to be kept in view for the assessment of valuation for the purpose of section 82 (2) of the Municipalities Act. The decrees which have been granted suffer from the same infirmity. It has been pointed out by the learned counsel for the respondents that according to the rules contained in the fourth schedule to the Municipalities Act the assessment books have to be revised once in every five years and the quinquennial assessment thus made enures for that period. But it appears from the rules that a procedure has been prescribed for changing the assessment whenever a case is made out for doing so. We are not concerned with the procedural difficulties which may be experienced, we have to declare what the law is and as appears to be well-settled the assessment of valuation for the purpose of tax must be made in accordance with and in the light of the provisions of the Rent Act which would be in force during the period of assessment.

In the result the decrees which have been granted are hereby modified by declaring that the general revision made by the Guntur Municipality by increasing the rental valuation of houses and buildings beyond the fair rent determinable under the Rent Act in force for the period of assessment shall be illegal and *ultra vires* and a permanent injunction shall issue restraining the municipality from realising any amount in excess of such tax which may be found due on the valuation fixed according to the principles laid down in our judgment. In view of the entire circumstances the parties are left to bear their own costs in this Court."

In *The Municipal Corporation of Greater Bombay* v. *M/s. Polychem Ltd.*[12], it was observed:

"So long as a building is not completed or constructed to such an extent that at least a partial completion notice can be given so that the completed portion can be occupied and let, the land can, for purpose of rating, be equated with or treated as vacant land. It is only when the building which is being put up is in such a state that it is actually and legally capable of occupation that the letting value of the building can enter into the computation for rating *"Rebus sic stantibus"*. Although, the definition of land, which is rateable, covers three kinds of "land", yet, for the purposes of rating section 154 recognises only two categories. The doctrine of sterility, in the context of the provisions of the Act cannot apply. In England, what happens is that when land, which is in the process of being built upon, is equated with vacant land, which is not yielding any profit, it ceases to be rateable land. But under the Act all "land", whether vacant, or in the process of being built upon, or built upon, is rateable according to the well-settled principles. All that can be said is that, so long as a building being constructed on some land is not in a state fit for occupation, its rateable value should not be more or less than that of land which is vacant."

In *New Delhi Municipal Committee* v. *M. N. Soi and another*[13], it was held:

"Although legislative provisions for the fixation of standard rent in New Delhi contained in section 9 of the Delhi Rent Control Act LIX of 1958, are comparatively recent and fairly elaborate, yet, the fixation of rates for the purposes of assessment of house tax is still governed by the provisions of section 3 (1) (*b*) of the Punjab Municipal Act of 1911, enacted at a time when there was no machinery for the control of rent. On a bare reading of the provisions of section 3 (1) (*a*), no doubt is left that although annual value for purposes of rating land, may be linked to the assessment of land revenue, if

12. (1974) 2 S.C.J. 502: (1974) 3 S.C.R. 687: A.I.R. 1974 S.C. 1779.

13. (1977) 1 S.C.R. 731: A.I.R. 1977 S.C. 302.

the State Government so directs, yet in the case of houses or buildings, it is the reason able expectation to let such buildings, subject to certain reasonable deductions, which governs valuation whatever may have been the origin of rating. Where a rent is higher than that which can be legally demanded by the landlord and actually paid by a tenant despite the fact that such violation of the restriction on rent chargeable by law is visited by penal consequences, the municipal authorities cannot take advantage of this defiance of the law by the landlord. Rating cannot operate as a mode of sharing the benefits of illegal rack-renting indulged in by landlords for whose activities the law prescribes condign punishment. It is not the expectation of a landlord who takes the risk of prosecution and punishment which the violation of the law involves, but the expectation of the landlord who is prudent enough to abide by the law that serves as the standard of reasonableness for purposes of rating.

Where "fair rent" relating to the house in question in New Delhi, was fixed in 1941 under the New Delhi House Rent Control Order, 1939, and that fixation continued to be valid notwithstanding the repeal of the Control Order, even after the Delhi Rent Control Act, LIX of 1958 came into force, the fair rent determined the standard rent which still affected the assessment of rates of the house in question for fixation of rates for assessment of house tax under the Punjab Municipal Act, notwithstanding the fact that the landlord wos deriving at the time of fixation a much higher rent than the standard rent."

In *Indore Municipality* v. *Ratnaprabha*[14], the Court held:

"It would be a proper interpretation of the provisions of clause (*b*) of section 138 of the Act to hold that in a case where the standard rent of a building has been fixed under section 7 of the Madhya Pradesh Accommodation Control Act, and there is nothing to show that there has been fraud or collusion, that would be its reasonable letting value, but where this is not so, and the building has never been let out and is being used in a manner where the question of fixing its standard rent does not arise, it would be permissible to fix its reasonable rent without regard to the provisions of the M. P. Accommodation Control Act, 1961. This view will, give proper effect to the *non-obstante* clause in clause (*b*) with due regard to its other provision that the letting value should be "reasonable". Since no standard rent was fixed in respect of the premises in question the Municipal Commissioner was justified in adopting another suitable criterion for determining the annual value of the building. There is in fact nothing in the Act to make obligatory for the Commissioner to follow the provisions of the M. P. Accommodation Control Act in spite of the *non-obstante* clause and to limit the annual value to any standard rent that the building might fetch under the Act".

In *Ramaswami* v. *The Commissioner, Corporation of Madras*[15], it is stated that the value "has to be fixed on the basis of relevant provisions of the Rent Act. Such value has to be fixed with reference to the fair rent determined as per the provisions of the Rent Act. Where fair rent is not fixed Municipal Authorities have to apply the provisions of the Rent Control Act and determine the fair rent before assessing the property to tax".

In *Dalavai* v. *Government of Tamil Nadu*[16], it has been held as follows:—

"According to the Supreme Court the determination of the annual valuation of property with reference to the floor cannot be justified under the law of rating. Fixing the rate at a percentage of the capital value is not permitted by the Tamil Nadu City Municipal Corporation Act. Hence the property tax cannot be levied under section 100 of the Madras City Municipal Corporation Act, on the plinth area basis. The actual basis adopted by the corporation cannot be known unless reasons for the proposed

---

14. (1977) 1 S.C.R. 1017 : A.I.R. 1977 S.C. 308.

15. (1977) 2 M.L.J. 457 : 90 L.W. 713 : A.I.R. 1978 Mad. 141.

16. (1978) 1 M.L.J. 93 : 91 L.W. 110.

enhancement are given in the special notices contemplated by the rules; the assessing officers should be directed to give reasons for enhancement. Unless the assessee is told as to what is the reason for the enhancement in the assessment he may not know on what ground the enhancement has been made. In such cases he may not be able to put forward his objections *specifically and effectively*. It is therefore clear that the special notices should give reasons for enhancement".

In *Abdul Hasan* v. *Tiruvarur Municipality*[17], it has been observed as follows:—

"Under section 82 (2) of the Tamil Nadu District Municipalities Act, provision has been made for the fixation of annual rental value according to the rent at which the lands and buildings may reasonably be expected to be let from month to month or year to year less the specified deductions. The test essentially is what rent the premises can lawfully fetch if let out to a hypothetical tenant. The Municipality is not free to assess any arbitrary value and has to look to and is bound by the fair or standard rent which would be payable for a particular premises under the Rent Control Act in force. In this respect no distinction can be made between buildings, the fair rent of which has been actually fixed under the Rent Control Act and those in respect of which no such rent has been fixed".

The cumulative and derivative effect of all the decisions of various High Courts and our Supreme Court puts the legal position about the applicability of provisions of Fair Rent Act in the assessment of annual value for house-tax in the State of Tamil Nadu as follows:

1. The annual rental value of the house property has to be fixed with reference to the fair rent to be determined for the building applying the provisions of the Rent Control Act, *i.e.*, Tamil Nadu Houses (Lease and Rent Control) Act. Other methods of assessment to tax are illegal and not sustainable in law.

2. If fair-rent has been fixed already, that rent has to be taken as the basis for the computation of annual rental value. Calculation on the basis of 'actual rent' or 'reasonable rent' is not legal and only 'fair rent' should be the basis.

3. In cases where fair rent has not been fixed, the municipal authorities have to apply the provisions of Rent Control Act and determine the fair rent for the building before assessing the house property to tax.

UNIVERSITY COLLEGE OF LAW LIBRARY

17. (1978) 1 M.L.J. 121 : 91 L.W. 61.

SUITS BARRED UNDER TEMPORARY STATUTE.

By

B. SUNDARAMOORTHY, B.COM., B.L., *Advocate, Part time Lecturer, Law College, Madurai.*

In Tamil Nadu many Debt Relief Acts were passed in 1975-76 granting temporary reliefs to the debtors. They are, Tamil Nadu Indebted Agriculturists (Temporary Relief) Act (X of 1975). Tamil Nadu Indebted Agriculturists (Temporary Relief) Act (XV of 1976). Tamil Nadu Indebted Persons (Temporary Relief) Act (XVI of 1976), etc. Under these Acts, filing of suits and execution petitions was barred for a particular period. Section 3 of Act X of 1975, barred such a filing for 1 year from 15th January, 1975 and section 3 of Act (XV of 1976) and section 4 of Act (XVI of 1976) barred such a filing for 2½ years from 15th January, 1976 as eventually amended.

If a suit or execution petition is filed during the prohibited period and against a person entitled to the benefits of the said Acts, it is to be dismissed as barred under these Acts. This position was made clear by the decision of Ismail, J., in *Saradam Ammal* v. *Veerappa Chettiar*[1]. Similarly there are provisions for staying the suits and execution petitions which were already filed prior to 15th January, 1975 and pending on the date of commencement of these Acts.

But if the suits and execution petitions filed during the prohibited period were not disposed of prior to the expiry of the period specified in the said Acts, then the question arises as to what should be the proper disposal of those suits and applications after the expiry of the prohibited period. One view is that such suits and petitions should be dismissed as barred under those Acts and another view is that they should be prosecuted and disposed of as if those Acts were never in force. Justice Ramanujam has taken the latter view in *Margachari* v. *Krishnaswami Mudaliar*[2]. In this case a judgment-debtor filed an application for stay of execution under section 4 of the Tamil Nadu Indebted Agriculturists (Temporary Relief) Act (X of 1975), but without disposing of that petition, the executing Court posted it to 11th July, 1975 and the property was sold on 7th July, 1975. The judgment-debtor filed an application under section 47, Civil Procedure Code, for setting aside the sale and contended that the sale was void as it was conducted during the pendency of the stay application. He also placed reliance on *Nachimuthu Chettiar* v. *Moorthammal*[3]. But the lower Court dismissed the application filed under section 47, Civil Procedure Code. Ramanujam, J., also confirmed the decision of the lower Court and rejected the contention of the judgment-debtor holding that the judgment-debtor cannot rely upon section 4 of Act (X of 1975) at all, as it has ceased to have any operation after expiry of one year from 15th January, 1975. He observed, "Besides, the Tamil Nadu Act (X of 1975) is a temporary statute and it has expired by efflux of time. Though the Tamil Nadu Act (XV of 1976) has taken the place of the Tamil Nadu Act (X of 1975), the latter has ceased to have effect. It is a general rule of interpretation that if a temporary statute expires by efflux of time it should be deemed that the Act never existed on the statute book. Therefore the first appellant cannot claim to set aside the sale under section 47 of the Code of Civil Procedure on the ground that he is entitled to stay under section 4 of the Tamil Nadu Act (X of 1975), which has now ceased to have any operation".

I submit that the observation of the learned Judge is not correct and if it is accepted as correct, it will cause hardship to law-abiding litigants and tend to encourage disobedience to law. According to him after the expiry of the period it should be deemed that the Act (temporary statute) never existed on the statute book. If it is so, not only sections 3 and 4 of the Act X of 1975 will be deemed to have never existed, but section 5 of the Act X of 1975 and section 6 of Act XV of 1976 will also be deemed to have never existed on the statute book and a

1. (1978) T.L.N.J. 75.
2. (1978) 1 M.L.J. 74: 91 L.W. 651.
3. (1976) T.L.N.J. 36.

creditor cannot avail of these provisions at all. These sections deal with the exclusion of time for limitation and according to them the time during which the institution of suit or the making of the application was barred under the Act, shall be excluded in computing the period of limitation. If a creditor *bona fide* omitted to sue in the belief that the Act applies to the suit to be filed by him then also he can have extended period of limitation. Therefore if these sections saving the limitation for suits which could not be filed during the period of ban, were deemed to have never existed then all such suits will be out of time and could not be filed at all. This means a creditor who in obedience to law did not file the suit during the period of ban in accordance with section 3 or 4, has to lose the debt due to him and a creditor who disobeyed the law by filing the suit in contravention of section 3 or 4 stands to gain. Thus it leads to an awkward result. Further the presumption of fraudulent transfer available under section 6 of Act X of 1975, section 6 of Act XV of 1976 and section 7 of Act XVI of 1976, will not also be available to such a law-abiding creditor and he will be without any remedy to proceed against the property of the judgment-debtor, now in the hands of a third party, the transfer having taken place during the period of the Temporary Relief Acts. It is to be noted that the Tamil Nadu Debt Relief Act, (XL of 1978), which is a permanent statute does not contain any provision for exclusion of limitation, or for drawing the presumption of fraudulent transfer and the only provision providing for the same is the provision made in the temporary statute. Even though the Tamil Nadu Debt Relief Act (XL of 1978) is to be repealed by the Tamil Nadu Debt Relief Act, 1979, the latter Act also does not contain any such provision. Section 34 of the Tamil Nadu Debt Relief Bill, 1979 saves limitation only for those suits which would have been filed, but for the fact that the institution of the suit or making of the application was barred by the provisions of Act XL of 1978, thereby meaning only suits and execution applications of a debt the principal of which does not exceed Rs. 500 and of such portion of the debt as was wiped out under the Act XL of 1978, and in respect of other suits a creditor has to take shelter for extension of time only under the Temporary Relief Acts. In fact, all these sections 5 and 6 of Act X of 1975 and Act XV of 1976 and sections 6 and 7 of Act XVI of 1976 are intended to be invoked only after the expiry of period prescribed under those Temporary Relief Acts and to say that such an Act itself should be deemed to have never existed on the statute book after the expiry of the period is to defeat the very purpose of incorporating those sections themselves.

I would also like to cite a direct decision holding a view contrary to the one expressed by Ramanujam, J. It is a decision of Rajagopalan, J. in *Ramanathan Chettiar* v. *Ramaswamy Pillai and another*[4]. In this case a suit was filed during the pendency of the Madras Indebted Agriculturists Temporary Relief Act (V of 1954). The Act came into force on 6th February, 1954 and the suit was filed on 2nd December, 1954 in contravention of the Act. The period prescribed by section 3 of that Act as eventually amended came to an end on 1st March, 1955. The suit was dismissed on 17th July, 1955 holding that the defendant was an agriculturist and the suit was barred under the said Act. It is to be noted that even though the Act V of 1954 (Temporary statute) was spent by efflux of time on the date of disposal of the suit, the learned Judge dismissed the suit. He observed: "That the suit was ultimately dismissed only on 19th July, 1955, really made no difference to the question at issue if the Court had jurisdiction to dismiss a suit which was instituted in contravention of section 3 of Act V of 1954".

Therefore, I submit that the view expressed in *Ramanathan Chettiar's case*[4], is preferable to the one expressed in *Margachari's case*[5] and the suits filed in contravention of Temporary Relief Acts are liable to be dismissed even after the expiry of the period prescribed under those Acts.

---

4. (1957) 2 M.L.J. 267 : 70 L.W. 733 : I.L.R. (1957) Mad. 1236: A.I.R. 1957 Mad. 780.
5. (1978) 1 M.L.J. 74 : 91 L.W. 651.

"APPEALABLE ORDERS AND REVISION UNDER SECTION 115, CIVIL PROCEDURE CODE"

By
R. MANILAL, *Advocate*, *Madras*-18.

There is analogy between a Revision and an Appeal. But the two are not identical. In a suit or an appeal the points to be determined ordinarily are those on which the parties are at variance. A revision application stands on a different footing. It is a matter between a higher Court and lower Court and in fact revisional powers may, in certain cases, be exercised without an application by any of the parties concerned[1]. An appeal is a continuation of the proceedings of the original Court and is in the nature of rehearing and in effect the entire proceedings are before the Appellate Authority which has power to review the evidence subject to the statutory limitations prescribed; but in a revision the Revisional Authority has not such powers to review the evidence unless expressly conferred by a statute. It cannot travel beyond the order passed or proceedings recorded by the Inferior Authority and make fresh enquiry and pass orders on merits on the basis of the said enquiry.[2]

The High Court is conferred revisional jurisdiction under section 115 of Civil Procedure Code to revise the orders passed by subordinate Courts. The revisional powers of High Court cannot be invoked unless the following conditions exist :

(1) There must be a '*case decided*' by a Court.

(2) The Court deciding the case must be subordinate to the High Court, and

(3) 'No appeal' must lie to the High Court against the decision.

(4) In deciding the case the subordinate Court must appear to have : (*a*) exercised a jurisdiction not vested in it by law or (*b*) failed to exercise a jurisdiction vested in it by law. or (*c*) acted in the exercise of jurisdiction illegally or with material irregularity. Thus the revisional jurisdiction of High Court is limited to questions of irregular exercise of or non exercise of, or illegal assumption of jurisdiction.

1. *V. Ramasubbayya* v. *B. Sarojioni*, (1976) 1 An. W.R. 332.

2. *State of Kerala* v. *K. M. Charia Abdulla & Co.* (1965) 2 S.C.J. 461 : (1965) 2 I.T.J. 351 : (1965) 1 S.C.R. 601.

On this background of the scope of revisional powers of High Court, the point taken for consideration, in this article, is 'whether a revision under section 115 of Civil Procedure Code to the High Court is maintainable against an appealable order under Order 43, rule 1 of Civil Procedure Code.'

The exercise of revisional powers of High Court is entirely discretionary. But as to whether the High Court would exercise its discretion in favour of interference, where another remedy, is open to the party, is the question to be answered by taking into consideration the following High Courts' decisions on this aspect. The answer is that the rule as to non-interference is not an inflexible one and will depend upon the specia circumstances and merits of each case[3].

Thus the High Courts have interfered tender the following circumstances:—

Where it is not clear whether another remedy is available to the applicant[4];
Where the other remedy is barred[5];
Where non-interference will lead to multiplicity of proceedings and unnecessary expenses and delay[6]; and
Where the other remedy is inconenient or not expeditious and would involve so much expense as to practicall amount to no remedy at all.[7]

To the above may be added an additional point according to which the High Court can exercise its revisional powers in a case "where no appeal lies to it (High Court). In this context we are now dealing with the proposition whether, as against any order of the lower Court which is an appea

3. *P.V. Rangayya* v. *Nagapothu Rao*, (1945) M.W.N. 740: (1945) 2 M.L.J. 581: A.I.R. 1946 Mad. 176; 178 *Bagyalakshmi* v. *Babu*, I.L.R. (1946) Mad. 640: (1945) 2 M.L.J. 567 : 58 L.W. : 634; A.I.R. 1946 Mad. 90. *K Virupakshiah* v. *M. Shivalingaiah*, A.I.R. 1960 A.P 540.

4. *P.V. Rangayya* v. *Nagapothu Rao*, (1945) 2 M.L.J 231 : A.I.R. 1946 Mad. 176 at 178; *Mani Ram* v. *Jhamru*, A.I.R. 1952 H.P. 24 at 26 : *Freozali* v. *Amadulu*, A.I.R. 1956 Tripura 26 at 27.

5. *Ayodhya Prasad* v. *Secretary of State* A.I.R. 1924 Nag. 298 at 299; *K. Virupakshiah's case*, A.I.R. 1960 A.P. 540.

6. *Vaithilingam* v. *Kandaswami*, 60 M.L.J. 713 : 33 L. W. 210 : A.I.R. 1931 Mad. 1 at 5 : *Official Receiver* v. *Amara*, (1940) 2 M.L.J. 860 : 52 L.W. 810 : A.I.R. 1941 Mad. 262 : *K. Virupakshiah's case*, A.I.R. 1960 A.P. 540 at 542, *Tara Prasanna* v. *Jhaman Ram*, A.I.R. 1953 Pat 8.

7. *Krishnaswamy* v. *Venugopala*, A.I.R. 1942 Mad. 614 at 616; *Smt. Ashalata Meitra* v. *A. W. Viz*, A.I.R. 1956 Cal. 311 at 312.

able one under Order 43, rule 1 of Civil Procedure Code, the revisional power of High Court can be invoked, without prefe-ring an appeal in the lower Court. The proposition has been solved by various High Courts by holding that the expression, "in which no appeal lies there to", must be inter-preted to mean and include only those cases where no appeal either directly or indirectly (*i.e.*) either in the form of first appeal or second appeal lies to the High Court. The revisional power will not be excluded merely because there may be an appeal to the lower (District) Court.[8]

It was held that even the pendency of an appeal before the District Judge is no bar provided no appeal lies to the High Court[9]. The matter of interference by the High Court, by way of revision under section 115 of Civil Procedure Code against an appealable Order even though an appeal is provided to the District Court, apart from the various High Court decisions, has now become a settled proposition of law by virtue of the decision of the Supreme Court of India, the highest Court in the land[10].

From an analysis of the above said decisions we have to conclude that the High Court can revise an appealable order for the sake of convenience of parties and to save expenses[11] for curing abuse of powers[12] and in the case of gross injustice[13] by the lower Court and lastly to subserve the ends of justice[14].

It is very significant to note the absence of any Division Bench or Full Bench decision of our High Court on such an important point of law apart from the above referred Supreme Court decision.

8. *Rashbehari Dutta* v. *Pancharan De*, A.I.R. 1967 Cal. 627 ; *Jagannath Prasad* v. *Ranganatha Kotiar*, (1966) 1 M.L.J. 451 : A.I.R. 1966 Mad. 370 : *Bahela Kuer* v. *Ganjan Raj*, A.I.R. 1954 Pat. 438.

9. *Mahadeo* v. *Khubi Ram*, A.I.R. 1929 All. 793 ; *Paddani Kuar* v. *Dinu Rai*, (1886) I.L.R. 8 All. 111 (F.B.) : (1886) 6 A.W.N. 28.

10. *Khanna, S. S.* v. *F. J. Dillon*, (1964) 4 S.C.R. 409 : A.I.R. 1964 S.C. 497, *Vidya Vati* v. *Devi Das*, (1977) 1 S.C.C. 293 : (1977) 2 S.C.R. 182 : A.I.R. 1977 S.C. 397.

11. *Ballelal* v. *Manoharlal*, A.I.R. 1944 Nag. 295.

12. *Bagyalakshmi* v. *Bapu*, (1945) 2 M.L.J. 567 : A.I.R. 1946 Mad. 90.

13. *Mulk Raj* v. *Ramdoss*, A.I.R. 1957 J. & K. 17: *Khushnud Hussain* v. *Janki Prasad*, A.I.R. 1931 All. 663

14. *T.P. Kuppuswami Pillai* v. *Alwar Chettiar*, 41 L.W. 20 : A.I.R. 1935 Mad. 89.

BREAKDOWN OF MARRIAGE AS A GROUND FOR DIVORCE

By

KUSUM, M.A.LL.M., *Indian Law Institute, New Delhi*-1.

And yet another dead marriage has been denied a death certificate and the seal of legality affixed on it by the Delhi High Court thrusting upon the parties—one desiring a divorce and the other contesting—to keep up the matrimonial bond *at least in the eye of the law*. Thus, in *Gulabrai Sharma* v. *Smt. Pushpa Devi* decided by Justice Rajinder Sachar on 19th April, 1979, the Court and the counsel were convinced that the marriage had gone to the rocks but no relief could be given. According to the Judge, "An unfortunate situation has arisen where none of the parties are at fault, but still they do not have the grace and sensitivity to agree to a divorce by mutual consent....Law as at present is quite rigid and the human sensitivity which should have found some way either to smoothen the relations between the parties or to put an end to it has not triumphed."

And he lamentfully held;

"Our law, as at present, does not permit the Court to dissolve the marriage on the ground of irretrievable breakdown of the marriage." And again, "though I find that the marriage is not continuing I am helpless to give any relief to the parties."

Gone are the days when marriage was a celestial bond between two parties clinging to each other throughout life (amongst Hindus also beyond life for a virtuous wife was expected to become *sati* after the husband's death). The spread of education, liberation movements, close contacts with outside cultures, and socio-economic conditions have paved the way for a system of matrimony with an easy entrance and an equally easy exist. It is hardly three decades when our society, and especially the Hindu society, viewed divorce as something most undesirable. It was available only under most exceptional circumstances and entailed a good deal of stigma, especially in case of the girl. Even otherwise, a woman's right to seek separation from the husband was still more restricted. The early twentieth century witnessed stray State enactments providing relief by way of separation or divorce to hard cases. However, it was not until the Hindu Code with its various statutes and especially the Hindu Marriage Act 1955, came that divorce as a relief, stepped into the system of Hindu matrimonial laws. This Act revolutionised the whole concept and provided for divorce on certain given grounds. Both the husband and the wife are given equal rights under this law. Nay, a woman has better rights for she has certain additional grounds for seeking a divorce. The system under the 1955 Act, however, is based on the concept of 'fault' of one party and the 'innocence' of the other. A party to any of the matrimonial proceedings is entitled to relief only if the 'fault' of the other can be established. Thus a divorce can be had if the other party deserted, lived in adultery, was incurably ill, was cruel (*vide* amendment in 1976 introducing cruelty as a ground for divorce) etc. etc. These grounds are quite difficult to prove and more often than not a case is cooked up by levelling false charges and accusations simply to fulfil the requirement of the statutory clause. The result is that the relations between the spouses are embittered further and no efforts at reconciliation can be expected to succeed.

There have been opinions against a fault-oriented divorce from various quarters *viz.*, lawyers, researchers, judges and the people at large because, such a system, is time-consuming, cumbersome, embarassing and also humiliating. In 1976 our legislators introduced the much sought for divorce by mutual consent. This too is not a satisfactory solution to the problem. It does away with the requirement of framing charges and imputing misconduct or matrimonial fault on the party, but what about cases where one of the parties does not or withdraws consent to the divorce? It is not improbable that one of the spouses, for reasons social, economic or other, may not want to have a legal divorce. One does come across innumerable cases where parties are leading no better than 'cats and dogs' life but still live under one roof. Such a marriage is utterly broken down with constant bickerings absence of mutual affection and understanding but in law—it subsists. None may be at fault but things have reached a stage when the purpose of matrimony is absolutely defeated by the superficial bond. What is the way out in such cases especially when one party chooses not to get out of it or even permit the other to seek liberation? It cannot be denied that

such an unhappy marriage has baneful effects on the parties, the children and on the society at large.

There has been a lot of talk about introducing the principle of breakdown of the marriage as a ground for divorce in our legal system. It already exists in many countries like England, America, Canada, Australia, New Zealand etc. Recently, our Law Commission also, vide its Seventy-First Report prepared last year has recommended the introduction of irretrievable breakdown as a ground for divorce.

In fact, not to speak of the parties involved, even, as has been mentioned above, the judges have very often found themselves in a dilemma in this respect. No effective relief can be given in many deserving cases simply because the judges are "tied down to technicalities". To take a few instances in *Dastane* v. *Dastane*[1], parties were litigating for about fourteen years but ultimately, the highest Court of the land dismissed the husband's petition for separation on ground of condonation. Thus parties who were literally at war were expected to keep up the marriage. In *Mohinder Pal* v. *Kulwant Kaur*[2], and *Swaraj Garg* v. *K.M. Garg*, (decided by the Delhi High Court on 7th March, 1978) no effective relief could be given for want of reasonable "grounds" even though the marriage in both the cases had been utterly wrecked and beyond repair.

The Law Commission recommendations providing for three years separation as an evidence of breakdown of the marriage and providing for the relief of divorce on this ground should not be put in cold storage. With sufficient safeguards in the interest of children and maintenance provisions for them and the wife, the legislators should pay heed to the proposals. Sad cases are bound to come up for instance when one of the parties is totally unjustified and the other innocent, yet even if the former does not want to continue with the marriage, he can make a hell of the whole thing himself and yet plead irretrievable breakdown of the marriage, but alas! this is a part of the game. The real issue is whether any useful purpose can be served by withholding a divorce even in such cases where none or only one, of the parties is at fault. Perhaps not. Such a situation would give invitation to many problems and emotional strains. Painful though it may be, yet Courts should give the death certificate without much delay. When the world is heading towards legalising euthanasia, taking away life on grounds of mercy, why cannot a marriage which is *de facto* dead be so declared *de jure* without much of fuss?

---

1. (1975) 2 S.C.C. 326: (1975) 3 S.C.R. 967: A.I.R. 1975 S.C. 1534.
2. A.I.R. 1978 Delhi 141.

A CRITICAL NOTE ON

M/S. KOLAPUR TRADERS BY PARTNER v. SUBRAMANIA MUDALIAR, (1979) 2 M.L.J. 43: 92 L.W. 290.

By

R. S. VENKATACHARI, B.COM., B.L., *Advocate, High Court.*

In the above case Maheswaran, J., held that the profession of an Advocate was a learned profession which could *not* be termed as a "business" within the definition of section 10 (3) (*a*) (*iii*) of the Tamil Nadu Buildings (Lease and Rent Control) Act (XVIII of 1960).

The owner of a building, a lawyer, filed a petition against a firm doing business in jaggery and occupying the premises belonging to the lawyer, for eviction, before the Rent Controller, Vellore on the ground that he required the premises *bona fide* for his own occupation, to set up his practice. Maheswaran, J., allowing the revision petition and in setting aside the orders of eviction passed by the Courts below, held that the petition was not competent under section 10 (3) (*a*) (*iii*) as in his view, the Vakils' profession cannot be considered as falling within the definition of "business":

The above view does not appear to be sound and must be deemed to have been overruled in the light of Supreme Court decision in (*S. Mohanlal* v. *R. Kondiah*[1]). There the question arose under section 10 (3) (*a*) (*iii*) Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960. Section 10 (3) (*a*) (*iii*) of that Act provides for the eviction of a tenant from a non-residential building where the landlord is not occupying a non-residential building in a city, town or village concerned which is his own or to the possession of which he is entitled under the Act or otherwise. (Identical with the Madras Act)

(*a*) for the purpose of a business which he is carrying on, on the date of the application or; (*b*) for the purpose of a business which in the opinion of the Rent Controller the landlord *bona fide* proposes to commence.

In that case, the respondent (landlord-advocate) filed an application before the Rent Controller, seeking eviction of the appellant from the premise in question on the ground that he required the premises for the purpose of carrying on his profession as an advocate. The tenant was carrying on business as jewellers in the Andhra Pradesh case.

It was contended that section 10 (3) (*a*) (*iii*) used the expression 'business' only and not the expression "profession". That contention did not find favour with the Division Bench of the Andhra Pradesh High Court, consisting of Gopal Rao Ekbote and Ramachandra Rao, JJ. The tenant came up on appeal by Special Leave to the Supreme Court, where Sarkaria and Chinnappa Reddy JJ., affirmed the decision of the Andhra Pradesh High Court. The short question for consideration in that appeal was whether the practice of the legal profession was "business" within the meaning of section 10 (3) (*a*) (*iii*) of the Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960.

The learned Judges referred to the contention of Dr. Chitaley (in para. 2 at page 488 R.C.J.); counsel for the appellant, that there was a clear distinction between "business" and "profession" and that the practice of a liberal profession like that of an advocate or a doctor, which had nothing commercial about it was not "business" within the meaning of section 10 (3) (*a*) (*iii*) of Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960. The learned Judges dealt with the contention in para. 3 (at page 488) thus:

"The expression 'business' has not been defined in the Andhra Pradesh (Lease, Rent and Eviction) Control Act, 1960. It is a common expression which is sometimes used by itself and sometimes in a collection of words as in "business, trade or profession". It is a word of large and wide import, capable of a variety of meanings. It is needless to refer to the meanings given to that term in the various dictionaries except to say that everyone of them notices a large number of meanings of the word. In a

1. (1979) 1 R.C.J. 487: (1979) 2 S.C.C. 616 : A.I.R. 1979 S.C. 1132.

broad sense, it is taken to mean "everything that occupies the time, attention and labour of men for the purpose of livelihood or profit". In a *narrow* sense, it is confined to a commercial activity. It is obvious that the meaning of the word must be gleaned from the context in which it is used. Reference to the provisions of the Constitution or other statutes, where the expression is used cannot be of any assistance, in determining its meaning in section 10 (3) (*a*) (*iii*) of the Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960. It is not a sound principle of construction, to interpret expressions used in one Act with reference to their use in another Act. More so, if two Acts in which the same words are used are not cognate Acts. Neither the meaning nor the definition of the term in one statute affords any guidance to the construction of the same terms in another statute, and the sense in which that term has been understood in the several statutes, does not necessarily throw any light on the manner in which the term should be understood generally. On the other hand, it is sound and indeed a well-known principle of construction that meanings of words and expressions used in an Act must take their colour from the context in which they appear".

The learned Judges referred to the decisions in *Sethurama Menon* v. *Meenakshi Ammal and others*[2], *Bangalore Water Supply and Sewage Board etc.* v. *A. Rajappa*[3], *Stuchbery and others* v. *General Accident Fire and Life Assurance Corporation Ltd.*[4], and distinguished those decisions. They observed: "It would be most unwise to apply the observation contained (*Rajappa's case*[3]) to determine whether the practice of a liberal profession is within the meaning of "business" in Rent Control Legislation (*See* page 490-para. 6). They quote with approval the decision reported in Re *Williams Well Trustee Chartered Bank of India, Australia and China and another* v. *Laxman Sarwak Surey and others*[5], dealing with the very question, whether the practice of law was a "business" within the meaning of the Madhya Pradesh Accommodation Control Act, wherein A. P. Sen, J., held that word "business" had to be given a *wide* meaning as to include any profession.

It is therefore respectfully submitted that the interpretation of the word "business" occurring in section 10 (3) (*a*) (*iii*) of the Tamil Nadu Buildings (Lease, Rent and Eviction) Control Act by Maheswaran, J., in *M/s. Kolapur Traders case*[6], is narrow and requires reconsideration both on principle and authorities referred to above. It cannot be considered good law, any more, in view of the Supreme Court decision in *S. Mohan Lal* v. *R. Kondia*[7].

2. A.I.R. 1967 Ker. 88.

3. (1978) 3 S.C.R. 207 : (1978) Lab. I.C. 467: (1978) 1 S.C.J. 481: (1978) 2 S.C.C. 213: (1978) 1 Lab. L.J. 349 : A.I.R. 1978 S.C. 548.

4. (1949) 2 K.B. 256.

5. 1972 R.C.J. 1.

6. (1979) 2 M.L.J. 43 : 92 L.W. 290.

7. (1979) 1 R.C.J. 487 : (1979) 2 S.C.C. 616 : A.I.R. 1979 S.C. 1132.

A NOTE ON M|S. KOLAPUR TRADERS v. SUBRAMANIA MUDALIAR, (1979) 2 M.L.J. 43: 92 L.W. 290.

By

P. S. SUNDARAM, M.A., M.L., *Advocate*, *Tuticorin*-3.

An Advocate cannot evict his non-residential tenant on the ground that he requires the building for his own use and occupation is the legal proposition that emerges from the judgment of the Madras High Court in the case of *M|s. Kolapur Traders* v. *Subramanian Mudaliar*[1], delivered by Maheswaran, J. The reasoning arrived at by the High Court is based as the ground that the Act gives the benefit to those who are in business without a building and not to those who practice a professional calling like that of an advocate in the like situation. The High Court has made an effective distinction between the word "business" and the term "profession" and since the Act is silent for the professional requirements, the remedy sought by the advocate-landlord is not available. This judgment was delivered on 30th January, 1979.

The Supreme Court has delivered a judgment on 2nd February, 1979 over an appeal from the Andhra Pradesh High Court in *S. Mohan Lal* v. *R. Kondiah*[2]. The Supreme Court has held that the advocate can evict his non-residential tenant on the ground that he requires the building for his own use and occupation. The Supreme Court has held that the word "business" is wide enough to carry with it the term "profession" also in the given context of the Andhra Pradesh Lease and Rent Control Act.

The Supreme Court has approved the decision given by the Madhya Pradesh High Court in *Taramal* v. *Laxman Sewak Surey*[3], and chose not to approve the decision of the Kerala High Court judgment *M. P. Sethurama Menon* v. *Meenakshi Amma*[4], on the stated lines. The same two decisions were cited before the Madras High Court and the High Court, dissented from the Madhya Pradesh judgment and chose to follow the Kerala High Court judgment. Since the judgment of the Supreme Court has a binding effect throughout the country it can be safely presumed that the Madras High Court judgment has been impliedly overruled in view of the fact that the Andhra Pradesh Act and the Tamil Nadu Act are *in pari materia* with each other.

But on a reading of the Supreme Court judgment and the High Court judgment one is tempted to view that the High Court judgment is based on stronger reasoning than that of the Supreme Court viewed from an academic angle.

To deny the benefit of the labour legislation to an employee in an advocate's office on the ground that the term profession cannot be equated with business and to hold a contrary view when an advocate seeks to evict his tenant that the term business includes profession also, sounds not fair.

The Supreme Court's reasoning that "the word must be interpreted in the context of the statute in which it occurs and not in the context of other statutes or in a manner alien to the context of the statute concerned" is just skidding over a general word used in the Act. The reasoning of the Supreme Court in distinguishing the judgment of the English case *Stuchbery* v. *General Accident Fire and Assurance Corporation, Ltd.*[5], is also not quite convincing. The Supreme Court judgment observes that the English decision pertains to "the right to compensation for the goodwill attached to the premises where the "business" or "profession" was being carried on. We do not think that the case is of any help to the appellant". With great respect to the Supreme Court judges it does not help in tangling out the interpretation of the word "business" and the term "profession". The safer course will be for the Legislature to intervene and to amend the Act and include the word "profession" also after the word business in section 10 (3) (*a*) of Act XXVII of 1960.

---

1. (1979) 2 M.L.J. 43: 92 L.W. 290.
2. (1979) 2 S.C.C. 616: (1979) 1 R.C.J. 487: A.I.R. 1979 S.C. 1132.
3. (1971) M.P.L.J. 888.
4. A.I.R. 1967 Ker. 88.
5. (1949) 2 K.B. 256.

TRANSFER OF HIGH COURT JUDGES.

By

T. S. KRISHNAMOORTHY, B.SC., B.L., Advocate, *Coimbatore.*

When the Judges of the Supreme Court expressed their thinking, the Attorney-General concurring, in interpreting Article 222 (1) of the Indian Constitution in the *Union of India* v. *Sankalchand Himatlal Sheth*[1], that transfer of a High Court Judge from one High Court to any other High Court without his consent ought to be the exception and not the rule and should be resorted to only in rare cases and that too in public interest, it would appear that they have been moved by excessive caution to protect the State Judiciaries from the ghosts of executive intrusions laying down the rigorous test of "consultation" as they have done, and steering clear of the very real twin problems of national integration and honest judiciary.

At the outset it can be stated on good authority that our Constitution is not wholly federal. It is said to be quasi-federal. At any rate, it is indisputable that it is a fallacy to equate it with the federal type of the American Constitution, and Justice Bhagwati's dissenting assumption of the federal nature of the Indian Constitution would appear to be not quite sound and attribute to the Organic Document a characteristic not vested in it by its makers. In fact, in the domain of judiciary the feature of unitariness is markedly present. Article 217 (1), which invests the President with the power to appoint High Court Judges, Article 217 (1) (*b*) and Article 124 which give him power to remove them after prescribed procedure, Article 217 (1) (*c*) which confers on the President the power to appoint a High Court Judge to the Supreme Court, Article 222 (1) which was the Article under fire and Articles 230 and 231 providing for extension of jurisdiction of High Courts to the Union Territories and establishment of a common High Court for two or more States *inter alia*, put the supposition that the judiciary in India, composed of the Supreme Court and the High Courts, is a unitary concept beyond controversy. So it follows that, being one of the three important organs of the Government, it has a separate and important role to play in the nation as a whole.

Once it is accepted that our country is one and the States are merely units striving for social, and that the quality of justice in the country cultural, economic and political integration as a whole must be our prime concern, then the rather narrow construction put by the Supreme Court on the grounds for exercise of the right of the President under Article 222 (1) appears to be a retrogade move. The Court admonishes in more than one place that this power is to be sparingly used in exceptional cases.

The Supreme Court having observed that public interest is the only ground on which Article 222 (1) can be invoked allows that national integration is in public interest. The Chief Justice observes:

"...... no one can deny that whatever measures are required to be taken in order to achieve national integration would be in public interest. Whether it is necessary to transfer Judges from one High Court to another in the interests of national integration is a moot point. But that is a policy matter with which Courts are not concerned directly. One may, however, venture the observation that there are numerous other ways of achieving national integration more effectively than by transferring High Court Judges from one High Court to another". (Page 2344).

This rather lackadaisical note struck by the Judges of the highest Court is saddening. The need of to-day is for oneness of the country, socially, economically and culturally. When divisive elements who engage in selfish slogans of regionalism and parochialism are not wanting, how can one "cut at these barriers?" If transfer of High Court Judges is one step, though a small step in the mind of the Supreme Court, towards achieving such national solidarity, why should it not be attempted as a matter of policy?

---

1. (1978) 1 S.C.J. 265: (1977) 4 S.C.C. 193: (1977) Lab.I.C. 1857: (1978) 1 S.C.R. 423: A.I.R. 1977 S.C. 2328.

Further and more important, an honest judiciary is the *sine qua non* for a civilised society. The role of Judges as the interpreters and upholders of the rule of law cannot be over-emphasised. But Judges are men and not computers programmed to hand out infallible justice, and they suffer from the susceptilities men are heir to. Thomas Jefferson said:

"Our Judges are as honest as other men and not more so".

The Chief Justice was not unappreciative of the frailties of men when he remarked that the Judge's

"personal interest may lie in continuing in a Court where his private interest will be served best, whereas, public interest may require that his moorings ought to be severed to act as a reminder that 'the place of justice' is a hallowed place'." (Page 2341).

Justice Untwalia was more explicit. He said:

"There may also be a necessity of a transfer of a Judge on the ground that a Judge is not of good behavious such as not being above board in the matter of integrity and honesty, being either corrupt or showing favour to a section of the members of the Bar, or he is a sectist or parochial in his approach to the administration of justice or the judiciary in the State. It would be undoubtedly in the public interest to send him from one High Court to another. This may not completely put a stop to his misdeeds but may minimise them appreciably". (Page 2388).

The impractical suggestion of impeachment of the erring Judge instead of transfer was rightly rejected by Justice Krishna Iyer as being unrealistic holding that "principled pragmatism is the soul of policy".

Here it must be said that routine transfer of Judges in the subordinate judiciary of a State from one place to another has proved a sound measure to mitigate these trends. Corrupt Judges would not have time to take deep root or even if they had, are forced to migrate before the evil assumes dangerous proportions. Other shortcomings could be overcome by experience and learning in different places and under different conditions and atmosphere. It is safe to assume that these considerations were present in the minds of the founding fathers when they put Article 235 in the Constitution Book.

One other factor to be taken note of is the policy in appointing Judges to the High Court. It will be disingenuous to contend that merit alone is the present day criterion. Social and political considerations also have come to play a part. Legal notables with good practice commanding respect from the Bench and the Bar alike are not anymore automatic choices. Nor does the Bench hold to them the same attraction of yesteryears. Nor is it felt to-day that wisdom is a necessary attribute of experience and consequently of age. Not infrequently relatively young Judges find themselves entrenched in the highest seat of the State judiciary. The resolution of the Orissa Bar urging the fixing of a minimum age for appointment to the High Court is a pointer to this fact. The consequence is worth pondering if only because of its psychological and moral impact on the litigant populace and their advocates. After all, the cardinal rule of justice also appearing to be done is still true. It could be said with confidence that a mofussil lawyer has more courage to differ from the Judge in maintaining his point of view than a fellow of his in the High Court. Advocates unfortunate to fall into disgrace with a Judge in the subordinate judiciary can hope for better times in the near or not distant future. The same cannot be said of his compeer in the City.

In the above circumstances, it will be a Judge of superlative qualities indeed who can transcend the personal prejudices and ego that fixedness of tenure can breed, who can refrain from inflicting his pet notions and personal philosophies on the litigants and lawyers for long years. These are all evils springing out of unalterability of situations and conditions. Benjamin Cardozo's observations are referred to in the judgment in question. Expressing how subconscious forces and social philosophies of Judges hold their minds captive, the famous Judge said:

"Judges cannot escape that current any more than other mortals. All their lives, forces which they do not recognise and cannot name, have been tugging at them—inherited instincts, traditional beliefs and acquired convictions," immurement in one environment only adding to these forces. And it must be admitted that gifted men beyond the pale of these considerations are not frequent occurrences. In these circumstances, would not the analogy of the subordinate judiciary of a State help to stifle or, at any rate, moderate the evils?

Now, the import of the judgment under discussion would indicate that anxious concern was shown to the Judge under burden of transfer. While the Chief Justice wanted to leave the Judges untouched on the grounds of "inconvenience, hardship and possibly a slur" that transfer would involve, the last ground losing force if the transfer is done as a matter of policy, Justice Bhagwati was more elaborate. He took into account the possibilities of the Judge having to maintain two establishments, the education of the children, a partly or fully employed wife having to choose between giving up the same or living nine months in a year away from the husband, the differences in the medical facilities and climatic conditions in the States and the difficulty of attending auspicious occasions and sad occurrences in the home State. These thoughts no doubt do kindness to the Judges but pale into insignificance if the dual objectives of national unification and judicial integrity are to be nurtured and waxed. It must not be forgotten that the Constitution bestows a kindly eye on the branch of judiciary, fixes handsome emoluments to the Judges, gives them free residence and allows compensatory allowances, the entire value of which is not inconsiderable if we take into account the nature of things in the other two branches of the Government and national conditions. Further, the ills of transfer are not peculiar to the judiciary. In this connection, the legal proposition that this organ of the Government is not superior to the legislative and the executive is axiomatic and bearing on the point. Justice Krishna Iyer asserts:

"........we should make it clear that no claim to be an imperium in *imperio* can be extended to the judiciary or, for that matter, to any other instrumentality under the Constitution. Nor should Judges be independent of broad accountability to the nation and its indigent and injustice-ridden millions".

(Page 2367).

Justice Bhagwati would observe, referring to the three powers of the Government that "it is not possible to say that one is superior to the other". (Page 2354). If this viewpoint is accepted, then the reasoning in favour of the hardships of transfer to the Judges becomes undispassionate.

Lord Denning said:

"Law does not stand still. It moves continually. Once this is recognised, then the task of the Judge is put on a higher plane ....It is on his work that civilised society itself depends".

Such a noble functionary can be made to serve a national purpose and also to keep the institution of Justice as pure as human endeavour can make it if a liberal and lofty construction is put on the contents of Article 222 (1) of the Constitution so that the President, after consultation with the Chief Justice, will be able to invoke the power of transfer granted by it as a matter of policy.

BOOKS REVIEW

I. B.B. Mitra's Code of Criminal Procedure, Fifteenth Edition, 1979, by *A.R. Biswas*, (Two volumes) Vol 1, Rs. 90 and Vol. 2, Rs. 110. (Publishers: Eastern Law House Pvt. Ltd., Calcutta-700 013.)

Law is compounded of the notions of justice, utility and security. Its justification lies in its being an effective instrument of social justice. While substantive criminal law spells out the offences the Criminal Procedure Code chalks out the procedure to be followed and the machinery for the administration of criminal justice.

B.B. Mitra's book has been steadily growing in bulk since the first edition in 1920 due to the accumulation of case law and copious legislative changes. Over the years the Code of 1898 has given place to the Code of 1973 and Act V of 1898 has been superseded by Act II of 1974. Even the present Code is cumbrous and often beset by technicalities. As observed by Krishna Iyer J. in 1979 S.C. 478 at 523 the Code has "virtually re-enacted with minor mutations the vintage Code making forensic flow too slow and liable to hold-ups built into the law".

The Code contains 484 sections. Vol. 1 covers sections 1 to 224 and Vol. 2 the remaining sections. A noteworthy feature of the present book is the survey of the criminal jurisprudence of the contemporary world starting with the origin of criminal law and unfolding sequentially the development of criminal law. Another feature of the work is the holding of a jurisprudential perspective to explain the provisions of the new Code and providing a new insight into the working of the procedure. A synopsis has been provided under each section, furnishing as it were, a bird's eye-view of each section. Each section is analysed against the background of the earlier law and the subsequent developments including the State amendments have been carefully noted. Though many important decisions have been duly noticed some noteworthy decisions of the Supreme Court like 1978 S.C. 422 explaining the scope of section 144 and the nature of orders that may be passed thereunder, 1978 S.C. 514 pointing out that under the new Code where an offence is exclusively triable by the Court of Session the committing magistrate has no power to discharge the accused, 1978 S.C. 1025 holding that to direct a woman to appear at the police station is violative of Section 160 (1) do not seem to have been considered. Tables of comparison have been provided enabling the reader to have a glimpse of the old and new sections. The comments under each section are lucid. Vol. 2 carries an Index which is thorough and prepared with meticulous care. It also gives in an Addenda, the text of Act XLV of 1978 amending the Code of 1973 on a number of points, which received the assent of the President on 18th December, 1978. The two volumes constitute a welcome publication.

II. Modern Law of Insurance in India, by *K.S.N. Murthy*, First Edition, 1978. (Publishers: N.M Tripathi Private Limited, Bombay) Price Rs. 65.

Insurance in effect is cover against possible risk, against loss or injury which may happen to person or property. The existence of insurable interest distinguishes the insurance contract from a wager. The law of insurance is quite a few generations old. It has its roots abroad. Marine insurance was perhaps the earliest kind of insurance but today it embraces a wide field such as life, fire, marine, accidents, buildings, crops, air traffic and air travel etc. As the author rightly observes in Ch. I "the categories of insurance form a list which is not closed". With the change over from an agricultural to industrial economy and the phenomenal growth in modern trade and commerce of our country, vast vistas have opened out for insurance. Laymen, businessmen and industrialists, owners of factories, transport vehicles etc., lawyers and law students, employers and workmen, in fact every section of the people have been vitally drawn to it. There are many reputed and standard books on every kind of insurance in the western countries. In India however there is practically no single book by an Indian author covering the batic principles of all branches of insurance. The instant book is a landable attempt in this direction.

The whole subject is divided into five parts. Part I sets out the general principles of insurance. Part II covers the principles of law relating to life insurance. Part III is devoted to fire insurance, Part IV to marine insurance and Part V to liability insurance. There are 6 Appendices, containing respectively, the Life Insurance Corporation Act, 1956, Ch. VIII of the Motor Vehicles Act, 1939, Marine Insurance Act, 1963, Form of Policy, Institute Clauses; and the York-Antwerp Rules, 1950.

The primary principles of all branches of insurance law have been lucidly presented. The discussions are helpful, citing at the appropriate places relevant decisions, English and Indian. The book will come in handy to all who are interested in the theory and practice of insurance. To students and beginners in particular, it is gem of a book on the subject.

———

III. MOGHA'S INDIAN CONVEYANCER, revised by *Justice Prem Prakash*, Eighth Edition 1978, (Published by Eastern Law House Private Limited, Calcutta-700013). Price Rs. 65.

Conveyancing still continues to suffer in this country because of bad drafting and the performance of the task by persons who have not been trained for the purpose. Bad drafting often results in the intentions of the parties being defeated; it also tends to breed litigation. Mogha's book which first appeared some forty years ago catered to an existing need and became popular. Through the successive editions of the book the form of the book has not been altered. Even in the present edition it has been so except for some minor modifications. The new features are a statement of the principles of interpretation of documents and the addition of a table of cases.

An Introduction divided into 3 parts—Preliminary, General requirements of deeds of transfer, and Precautions and rules of Construction of deeds, is followed by general forms and finally by particular forms for different subjects like adoption, acknowledgment, agreements and so on. The forms are arranged in groups according to the subject and an introductory note is provided for each subject besides setting out the basic principles and the problem areas. The forms provided are simple eschewing technical terms and phrases employed in English law conveyancing and suitable for everyday use in this country and are set out in easily understandable language. On p. 49 it is stated that an adoption is now to the person adopting. The statement should be completed by adding that, when a widow adopts, the adoption is also to her husband according to the Supreme Court decisions in *Sawan Ram's case* 1967 S.C. 1761 and *Sitabai's case*, 1970 S.C. 343.

The book under notice is sure to prove a helpful handbook in this technical branch of legal draftsmanship.

———

IV. SOONAVALA'S THE SUPREME COURT ON INDUSTRIAL LAW, 1950 to 1978. Second Edition by *D.S. Chopra*, 1979. (Published by N. M. Tripathi Private Limited, Bombay) Vol. I Price Rs. 120.

Industrial law in this country is a compound of statutes and decisions of the Supreme Court. It is constantly evolving to adapt itself to rapidly changing labour conditions and standards set up by international authorities. How puzzling the position may be can be seen from the difficulty experienced in defining such terms as "industry," "bonus" etc. For instance *The Hospital Mazdoor Sabba case*, A.I R. 1960 S.C. 610 was not considered to be good law by *the Safdarjung Hospital case*, 1970 S.C 1407. But by 1978 that decision has been rehabilitated by the Supreme Court decision in *the Bangalore Water Supply* and *Sewerage Board case*, A.I.R. 1978 S.C. 548 overruling half a dozen intervening Supreme Court decisions. Similarly "bonus" originally conceived as an *ex gratia* payment in recognition of good work done is now being conceptualised by some as forming part of wages and by some others as a share of profits .

Soonavala's book came as a comprehensive survey of Industrial law and as a reference book containing all the decisions of the Supreme Court on Industrial law from 1950 to 1965. The present edition extends the coverage from 1965 to September, 1978. Vol. I contains (1) General Principles governing industrial adjudication; (2) Industry; (3) Industrial dispute; (4) Workman; (5) References; (6) Conciliation proceedings and settlements; (7) Adjudication; (8) Powers of Courts and Tribunal in case of discharge or dismissal; (9) Award; (10) Proceedings under sections 35 and 35-A of the Industrial Disputes Act; (11) Proceedings under section 33-C; (12) Miscellaneous Provisions relating to industrial adjudication; (13) Industrial State Acts; (14) General Principles governing adjudication of industrial disputes; (15) Wages; (16) Dearness allowance; (17) Gratuity; (18) Provident Fund; (19) Allowances; (20) Bank award allowances; (21) Promotions, transfers and compulsory retirement; (22). Facilities; (23) Working conditions, working hours and work-shifts; (24) Tenure of service and uniformity of condititions of service; (25) Principles for determining what is one establishment; (26) Strikes and lock-outs; (27) Payment of Wages Act, 1936; (28) Factories Act, 1948; (29) Mines Act 1952; (30) Employees' Provident Funds Act, 1952

(31) Minimum Wages Act, 1948; (32) Employees' State Insurance Act, 1948; (33) Workmen's Compensation Act, 1923; (34) Fatal Accidents Act, 1855; (35) Working Journalists (Conditions of Service and Miscellaneous Provisions) Act, 1955; (36) State Acts regulating conditions of service for employees in Shops and Establishments. The exposition is interesting. Every judgment of the Supreme Court is carefully analysed and summarised. The book will serve as a useful and dependable guide to those who deal in labour laws.

V STONE AND IYER ON PLEADINGS by *P.M. Baxi.* Second Edition 1979. (Published by N.M. Tripathi Private Limited, Bombay). Price Rs. 60.

Pleading signifies the statement of a party's case. It is from the pleadings that the subject of controversy between the parties falls to be ascertained and the issues for adjudication determined. The importance of pleadings has been recognised from very early times. It is said that good pleading consists in good matter, pleaded in good form, in apt time and in due order. It is also well-known that no evidence should be allowed contrary to the pleadings. The drafting of the pleadings is thus an art. Stone and Iyer undertook the task of writing a book on Pleadings "in order to advance the art of pleading in India and to assist the Subordinate Courts to exercise such control over the pleadings as the rules permit," steering a mid-way course between theory and practice. Soon after its publication in 1942 it became a classic. The passage of nearly four decades since then has not affected the value of the book though due to changed conditions and new statutes many statements had to be recast. The Courts also have been giving decisions over the years on questions of pleading or commenting upon ill-drafted pleadings in particular cases which had to be taken into account in bringing out a new edition.

The book is divided into two Parts. Part I has 12 Chapters under the captions, (1) Introductory. (2) Definition of a pleading. (3) Purpose and requisites of a pleading, (4) Statutory provisions relating to pleadings, (5) Statement of material facts, (6) Brevity and particularity, (7) Drafting a pleading, (8) Two illustrative cases of drafting, (9) Alternative Reliefs and the Court-fees Act, (10) Amendment of pleadings, (11) Striking out or amending the opponent's pleadings, (12) Variance between Pleadings, issues and proof. Part II consists of 15 Chapters relating to different kinds of suits and proceedings like (1) Mortgage suits. (2) Partition suit, (3) Maintenance suit, (4) Setting aside alienations, (5) Claim suit. (6) Recovery of land, (7) Trust and accounts. (8) Suit on a policy of insurance, (9) Contract, (10) Tort. (11) Entitling and concluding paragraphs of plaint, (12) Some samples of English pleadings. (13) Company proceedings. (14) Insolvency proceedings, (15) Matrimonial causes.

The present edition presents the material in substantially, the same order and under the headings which appeared in the previous edition. The addition of case-law is selective. Statements which had become obsolete have been jettisoned. Incorporation of new material is judicious. The legal profession will accord a hearty welcome to the book.

VI. LAW RELATING TO BUILDING AND ENGINEERING CONTRACTS IN INDIA by *G.T. Gajria.* Second Edition 1979. (Published by N.M. Tripathi Private Limited, Bombay). Price Rs 130.

The tempo of growth in building and construction industry in the country, both in the government and private sectors since Independence has not diminished. The need of know-how about the rights and obligations of the different persons responsible for and concerned with the execution of a construction work cannot be over-stated Owner, architect, surveyor, engineer and builder and contractor are in different ways involved and disputes arise about their respective rights and obligations and over the interpretation of clauses and terms of contracts entered into by the parties.

Arbitration clauses are incorporated in most of the contracts for settlement of the disputes. A book expounding the legal aspects of the rights and obligations of the different parties and interests involved in building contracts and stating the legal principles applicable is certainly a desideratum.

The book under notice is divided into 20 Chapters which deal with (1) Contracts in general, (2) Definitions, (3) Duties of architects, engineers, builders etc., (4) Tenders, estimates, drawings specifications, formation, interpretation of contracts etc., (5) Words and Phrases judicially interpreted, (6) Performance of contracts, (7) Extras, (8) Price and payment, (9) Defective work and its consequences, (10)

Approval and certificates, (11) Breach of contract, (12) Damages for breach of contract, (13) Forfeiture and determination, (14) Materials, plants and machinery etc., (15) Assignment, (16) Substituted contracts and sub-contracts, (17) Death, illness bankruptcy and liquidation (18) Guarantees and securities, (19) Limitation in general etc, (20) Arbitration. The book deals in a practical and concise way with a variety of legal problems which arise where building works are carried out No doubt most of the disputes arising between Employers and Contractors are decided on merits under arbitration clauses; there is still a certain amount of case-law English and Indian, on the subject which has been taken note of. The book will serve as a comprehensive and dependable guide to engineers, builders, lawyers and persons connected with the subject.

VII. Digest of Direct Tax Cases of Gujarat High Court, 1960-1978. Editor *K.H. Kaji*, First Edition 1978, (Published by Income-tax Appellate Tribunal Bar Association, Ahmedabad.) Price Rs. 50.

A digest of the decisions of a particular High Court on a particular branch of the law may ordinarily be of value and assistance only to the members of the Bar of the particular State. The instant work has however some special features enabling it to exercise a larger appeal. In his foreword, the learned Chief Justice (*Diwan, C.J.*) observes that "uptill now, many new points in the field of taxation laws, have been raised for the first time by the High Court of Gujarat among all the other High Courts". and "because of the early disposal of tax matters many of the points are dealt with for the first time by the High Court of Gujarat among all the High Courts" The decisions would thus serve as all-India precedents.

The present Digest is a complete digest of all cases (of about 600 judgments) under the direct laws disposed of during the period 1960-1978, both reported and unreported; of the Gujarat High Court. Each case is analysed and the points decided are elucidated under appropriate headings of which there are a hundred and forty. Annual supplements would be issued to keep the digest up-to-date. The Digest will be of great assistance to all persons concerned with the administration of direct tax laws either as persons administering the law or as members of the profession of income-tax practitioners and income-tax advocates.

VIII. Motor Accident Claims by *Ajit B. Majumdar*; Second Edition 1978. (Published by Eastern Law House Private Ltd., Calcutta 700013) Price Rs. 45.

Every person has a right to safety and security of his person irrespective of fault or negligence or carelessness or inefficient functioning of motor vehicle. Every person has a right to claim compensation as that is the only way of remedying injury caused to him in a modern urbanised, industrialised and automobile-ridden life. Claims Tribunals have been constituted under the Motor Vehicles Act, each exercising jurisdiction over such area as may be specified in the Notification constituting it. The Tribunal has exclusive jurisdiction to the exclusion of the Civil Court's jurisdiction. In cases however where a claim for compensation for damage to property exceeding Rs. 2,000 is also included the claimant may at his option refer the claim to a civil Court for adjudication. Where reference is so made the Claims Tribunal will have no jurisdiction over the matter. Whether Motor Accident claims have to be decided in the light of the principles of the law of torts or *de hors* such principles, whether "just compensation" in Chapter VIII of the Act could be interpreted as compensation "as is payable in law", have given rise to varying views.

The book under notice has endeavoured to present within a short compass the different aspects of the law relating to Motor Accident claims from the practical point of view of lawyers and the Tribunals. The book is divided into 15 Chapters, dealing with (1) Laws on the subject, (2) Introductory, (3) Constitution of a Motor Accidents Claims Tribunal, (4) Procedures of Inquiry and Powers of a Claims Tribunal, (5) Application for Compensation before the Tribunal, (6) Forms and Pleadings for compensation, (7) Inquiry into the claim, (8) Reference to a civil Court under proviso to section 110 (1) Motor Vehicles Act, (9) Proof of claim before Tribunal, (10) Defence in Proceedings before the Tribunal, (11) Award, (12) Illustrative cases of compensation awarded in Indian and Foreign Tribunals (13) Appeal from award, etc., (14) Award and its execution (15) Claims Tribunal Rules, There are also two Appendices, one setting out the relevant rules

for Tribunal Procedure and Prescribed Forms of Application, and the other referring to Insufficiency of a Form and suggested Forms. At p. 286 in regard to the question of widow's remarriage as a factor by which she will have made good her lost support the observations in A.I.R. 1976 Delhi 12 are cited that a judge is expected and indeed required to assess the likelihood that a widow will remarry. This he can only do by listening to what she has to say and by making some assessment of how attractive she appears to be. In A.I.R. 1978 Punj. 195 however a somewhat different view has been expressed that the future contingency of the widow of the deceased remarrying being speculative is not a ground for reducing the quantum of compensation awarded to her. This decision does not seem to have been noticed in the instant book. The book gives a clear presentation of the law and is bound to be helpful to lawyers, laymen and insurance companies alike.

IX. SELECTION AND APPOINTMENT OF SUPREME COURT JUDGES. A case study by *Rajeev Dhavan* and *Alice Jacob*, 1978 (Published by N.M. Tripathi Private Limited, Bombay). Price Rs. 20.

The Supreme Court and the High Courts are without doubt very important and cherished institutions. They are verily the keepers of the conscience and guardians of the living faith of a people on the march. It follows that the judges who man them should be of high calibre, moral rectitude and capable of inspiring confidence in the people about their ability to render true justice. Our Judges from ancient times have been justly revered for these qualities. It would not be correct, therefore, to state that " a large number of us do not seem to care as to who these people are" [Chapter I, p. 2]. Be that as it may it is certainly desirable that "Independent India must at some stage decide the criteria and the method by which it selects the Judges." Appointments made in 1973, January, 1977 and September, 1977 certainly caused a considerable jolt. The embers of it have not yet quite died down, as would appear from the 1978 controversy. It is familiar knowledge how Mr. Mohan Kumaramangalam provided the spark when he put forth his theory of "committed judges".

The book under notice stems from the controversy over the September 1977 appointments of two High Court Judges, one from Gujarat and the other from Bombay to the Supreme Court. Except in two cases where a member of the Bar was directly appointed to the Supreme Court, in all other cases appointment of Supreme Court judges has been from Chief Justices or puisne judges of the different High Courts. Be it a question of appointment of puisne judges of the Supreme Court or of appointment to the post of Chief Justice of that Court no definite norms have been set nor any principle uniformly followed over the years. Equally the mode of selection and the background motivations do not conform to any pattern. The Law Commission has roundly condemned the appointment of judges on the basis of communal, religious or regional considerations. Regarding appointment to the Chief Justiceship it has indicated that seniority is ordinarily but not invariably to be followed. To some extent it is not surprising that there are no other criteria for judging judges. At the most there can be only broad suggestions. Pragmatic considerations cannot be eschewed altogether. The authors Rajeev Dhavan and Alice Jacob have done a real service by their case study in depth. The book makes interetsing reading throughout.

X. VENKOBA RAO'S LAW OF BENAMI TRANSACTIONS AND BENAMI TRANSACTIONS UNDER INCOME-TAX LAW Fifth Edition Revised by *B. Malik.* and *V. Gouri Shanker*, 1979. (Published by Delhi Law House, P.B No. 47, Allahabad-211 001.) Price Rs. 75.

The term 'benami' has been used to denot two classes of transactions differing from each other in their legal character and incidents. In one sense it signifies a transaction which is real, for instance when X sells properties to *Y* but the sale deed mentions Z as the purchaser. Here the sale itself is genuine. The real purchaser is however Y, Z being only a name-lender. The term 'benami' is also sometimes used to refer to a sham transaction, a fictitious transfer with a cloak of reality. Benami transactions are very familiar in this country. Their variety is myriad. The motivations are quite often oblique, to escape taxation, to hoodwink creditors, to avoid claims of family members and so on. The law relating to such transactions is not contained in a Code but has to be gathered from the entire field of the law in a systematic manner.

The present work presents the subject in 25 Chapters. Chapter I to VII cover (1) Origin, definition, etc., (2) Benami distinguished from other legal relationships, (3) Doctrine of advan-

cement, (4) Examples of benami transactions, (5) Fraud and the law of benami, (6) Benami prohibited by law, (7) Suits by and against benamidars. Chapters VIII to XXI cover benami transactions *vis-a-vis* assessment etc., to income tax. Chapter XXII is devoted to Estate Duty and benami transactions. Chapter XXIII deals with Blank transfer of shares in companies and benami investments and Chapter XXIV with burden of proof in benami transactions. Chapter XXV gives Relevant Rules, Forms and C.B.D.T. circulars. There are also a number of Appendices providing relevant extracts from different Acts. Burgeoning case law has been carefully considered but some few decisions do not seem to have been noticed, such as *Bibi Siddique Fatima* v. *Saiyed Mohammad Mahmood Hasan*, 1978 All. L J. 634 (S.C.) on what constitutes a benami transaction, *Mohammad Ibrahim* v. *Syed Mohammad Abbubakkar*, 1976 Mad. 84 explaining the scope and object of section 66, Civil Procedure Code. The exposition is simple and clear. The book should prove useful to Courts, lawyers, income-tax officials and practitioners, and to the commercial community.

———

XI. MITRA'S LEGAL AND COMMERCIAL DICTIONARY, by *A.C. Sen*, Third Edition, 1979. (Published by: Eastern Law House Private Limited, Calcutta-700013.) Price Rs.45.

In legal and commercial world certain words and phrases have acquired peculiar connotation and content often different from their ordinary dictionary meaning. Again many statutes carry definitions of terms for the purposes of such statutes. Judges also interpret undefined terms in the context of the concerned statutory provisions. A legal dictionary has to take note of all these as well as of the ordinary dictionary meanings and then elucidate the meanings of words and phrases indicating the source or authority for the particular meaning presented.

In the instant book, words and phrases connected with civil, criminal and commercial law preponderate but terms in vogue in the fields of constitutional and international law have also been elucidated. Latin maxims which are often cited in the judicial decisions have been stated and explained. At one or two places the explanation of terms is not quite complete. At page 37 adoption is defined as the taking of another's son as his or her own son. The Hindu Adoptions and Maintenance Act is referred to. Under that Act a girl also can be adopted. At page 92 the elucidation of "aurasa" as a maternal brother or son of the same mother is involved and not happy. It just signifies a child born of one's loins during wedlock. At page 41, line 4, Uplian should be Ulpian. These are minor things. The Dictionary has been compiled carefully and in a helpful manner. That since its first publication in 1973 within the short period of about 6 years, a third edition had to be brought out attests eloquently to the popularity and merit of the work.

———

XII. THE LAW OF CENTRAL EXCISE, by *V.J. Taraporewala* and *S.N. Parikh*, with a foreword by *Soli J. Sarobjee*, 1979. (Published by: N.M. Tripathi Private Limited, Bombay.) Price Rs. 80.

'Excise' is a word of vague and somewhat ambiguous meaning. Usually but not always it is used to indicate a duty imposed on home-manufactured articles in the course of manufacture before they reach the customer. So regarded, an excise duty is plainly indirect. Excise constitutes the most fruitful single source of revenue of the Union Government and as pointed out in the Foreword "a fruitful source of income to legal practitioners as well". It is stated that out of every rupee which the Centre will collect in the year 1979-1980 the collections from Central Excise would be about 19 per cent. The Central Salt and Excises Act, 1944 is thus "the most important tax-collecting statute" of the Union. It is interesting to note that while the Act has 40 sections, the Rules number 240 and the First Schedule to the Act containing the Central Excise Tariff is verily a growing phenomenon.

The book under review offers comments on the sections of the Act, the rules and the tariff items individually. The statement of law in the text is supported by the decisions cited. Criticism of judgments is balanced and sound. Conflicts of judicial opinion are noticed, analysed and the authors' preference set out. Thus reference is made to the Delhi High Court's view in *Sulekh Ram's case* (1972) T.L.R. 1771 that goods exempted from excise duty by notification cease to be excisable goods and the contrary view of the Madras High Court in *Tamil Nadu Co-operative Society* v. *Assistant Collector*, (1978) E.L.T. (J. 57) and the former view preferred for the reason that one cannot

conceive of the mandatory requirement of section 3 "there shall be levied and collected .. duties of excise on all excisable goods", being given effect to, unless recovery at some rate, however small could be made (pp. 15, 16). The book is distinguished by neat and orderly presentation. The book will benefit not merely judges and lawyers but also the commercial community and the excise officials.

XIII. LAW OF INCOME-TAX IN INDIA by *V.S. Sundaram*, Eleventh Edition in 4 Volumes, 1978-79. (Published by Law Book Publishers, Allahabad-211001). Vol. I, Price Rs. 85.

Revenue is the first necessity of a State and taxes are raised from different sources. Income-tax is one such. It is a direct tax. Apart from Lord Macnaghten's observation that income-tax is a tax on income, so far there has been no accepted or acceptable definition of terms like 'capital' 'income' etc. The former is a fund and the latter is a flow is a catchy but not satisfying description. The Indian Income-tax Act also contains only an inclusive definition of income. As Justice Krishna Iyer once said "Incomprehensible legislation annoys the administrator and estranges the citizen" (19 5) 2 S.C.C. 472, 479. This is nowhere more true than in regard to income-tax legislation. Lord Halsbury's observation that "income-tax is not and cannot be.... from the nature of things cast upon absolutely logical lines" (4 T.C. 618, 625) is no consolation. In 1886, income-tax stood at 2 per cent. of the income; at the present time it is high and soaring. Over the years assessment procedures also have been altered several times. Provisional assessment by Income-tax Officer was given up; self-assessment by the assessee was called for; then a summary assessment was possible by the Income tax Offieer followed by a regular assessment by him if the assessee so desired. A further innovation is the provision for the take-over of real property changing hands collusively at deliberate under-valuation or for inadequate consideration.

Mr. Sundaram's book was first published in 1928 and immediately become a classic. The present edition, namely, the eleventh edition is the Golden Jubilee Edition. It is to be in 4 Volumes of which the first volume has now been published It covers sections 1 to 34 of the Income-tax Act of 1961. A brilliant and comprehensive Introduction has been provided dealing with matters like Income and Capital, History of Income-tax law in India, Construction of Taxing Act, Exemption from previous statutes, Theory of Income-tax legistation and international aspects, The liability of Governments to taxation, liability of foreign States, and the Economic Effects of income-tax. The commentaries provided under the sections are analytical and penetrating. The book will serve as a masterly guide to those who practise income-tax, to those who have to decide income-tax questions, to those who collect the tax and to those who have to pay income-tax.

XIV. CASES IN COMPANY LAW by *A.G. Kesavan with a Foreword by Justice S. Mohan.* 1978. (Published by N M Tripathi Private Limited, Bombay) Price Rs 35.

Company law is a complex subject. The Companies Act of 1956 is one of the lengthiest on the statute book. In the working of the Act practical difficulties often crop up and the questions come up before the Courts for elucidation. Starting from the promotion of a company to the winding up of one, guidance is afforded by case law. A judicious selection of the cases decided, brief extracts from the judgments pinpointing attention to the points elucidated, brief statements of the background facts would give a bird s eye-view of the entire law in a practical manner making comprehension easy. It is a task requiring high skill.

The book under notice divided into 30 chapters, in about 244 pages, has incorporated 240 cases. The cases are arranged and dealt with topicwise with introductory notes stating the legal principles involved. Suitable notes have been added where necessary. The decisions selected cover the whole gamut of the law. They are both English and Indian. The book will be helpful to the students, the bar and the judiciary alike.

XV. INDIAN CONSTITUTION: *Trends and Issues Edited* by *Rajeev Dhawan and Alice Jacob* (A selection of Papers presented at a Seminar held at Nagpur under the auspices of the Indian Law Institute, Delhi, and the University of Nagpur in January 1978). (Published by N.M Tripathi Private Limited, Bombay). Price Rs. 60.

The purpose of the Seminar was to examine recent trends and developments in the working

of the Constitution, to high-light significant constitutional issues of the post-emergency period. In the instant volume they are divided into 4 parts (1) The politics of constitutional charge, (2) Preventive detention without trial and emergency powers, (3) Pressures on Indian federalism, (4) Indian judiciary and the administrative power. In the matter of Constitutional change, while before 1967 Parliament acted on the assumption that it had plenary power to amend any part of the Constitution, *Golak Nath's case* decided that it had no power to abrogate the fundamental rights and *Kesavanand's case*, held that Parliament had no power to amend the basic structure of the Constitution. The 42nd Amendment was the result. One thing that has to be remembered is that apart from its claim of omnicompetency and imposition of curbs on the rule of law the 42nd Amendment was also designed to achieve very credible socialistic and scientific motives. The 45th Amendment which came as a counterblast could not escape the criticism that it emanated mainly from political motivations and did not sufficiently realise the need for correlation between the Constitution and its social goals. It is a moot question whether social justice could be achieved by mere amendments to the Constitution. It is also noteworthy that the proposal in the 45th Amendment Bill that the basic structure of the Constitution can be amended only by a referendum was not accepted by Parliament. Regarding judicial review, it is true that a significant polarity has crept into the relationship between the Government and the Courts. While the Government wants a free hand to do what it likes the Courts would like to retain their review power. Here again while setting up of independent tribunals in various areas may expedite disposal and relieve the pressure on the Courts, the abrogation of the powers of the High Court under Article 226 to intervene wherever necessary may tend to unbridled abuse of power by the Tribunal. Here also a doctrinaire solution may not be desirable.

Preventive detention and emergency powers evoke bitter emotion. Nevertheless a pragmatic approach alone to the subject will be realistic. All that can be said is that there should be no blanket power vested in the Government. If the rule of law is not to become a mockery, imposition of effective safeguards has to be made. As for the pressures on Indian federalism, they have appeared only when the Governments at the Centre and the States were run by different political parties. The pressures chiefly stem out of the fact that while policy initiation requires centralisation of powers, the implementation of the myriad policy schemes calls for decentralisation of power away from the Centre Another reason for the pressures is that at present there is no rational dovolution of the central finances.

The papers presented at the Seminar are marked by incisive analysis of the different issues, and close reasoning. The viewpoints, naturally, are not always the same.

XVI. D.D. SETH'S COMMENTARIES ON HIRE PURCHASE ACT, 1972 Second Edition Revised by *T D. Khurana*, 1979 (Published by Law Book Publishers, Allahabad-211001.) Price Rs. 66.

The concept of hire-purchase is, in its origin exotic. Hire-purchase agreements in our country represent a relatively modern phase in the development of commerce. At common law hire-purchase applied only to contracts of hire conferring an option to purchase It is, however, often used to describe contracts which are in reality agreements to purchase chattels by instalments, subject to a condition that the property in them is not to pass until all instalments have been paid. Hire-purchase agreements take various forms when, for instance, a financier is interposed between the owner of the goods and the customer. The law regulating hire-purchase in India is contained in the Hire Purchase Act, 1972. In England hire-purchase is regulated by the Hire-Purchase Act of 1938.

As pointed out in the Introduction, in a hire-purchase agreement, the transaction partakes of a contract of bailment with an element of sale added to it. A hire-purchase agreement stands distinguished from an agreement to sell in that while in the latter each party is under an obligation to perform his part of it, namely the owner to sell and the other party to buy, in the former although there is an obligation on the owner to sell it on performance of certain conditions by the hirer, the latter is under no obligation to purchase it and can always return the article thereby absolving himself from paying any further hire in respect of that article, though he will still remain liable to pay the unpaid hire during the time that he retains the article.

In the present book the author has given a picture of the entire hire-purchase law and the problems arising thereunder in the light

of judicial decisions both in England and India. Case law is quoted up to date Several model forms are given in the appendices. The book will prove useful to the Bench and the Bar as well as to hirers and hire-purchase companies.

XVII. PAYMENT OF GRATUITY ACT by *D.S. Chopra*, Second Edition, 1979. (Published by Eastern Law House Private Limited, Calcutta-700013) Price Rs. 25.

Gratuity means a voluntary payment made by an employer to his workers at his pleasure to keep them contented. Originally given for long and meritorious service, later on mere long service was considered enough for granting the benefit. At present gratuity is paid to workmen with an intention to help them after retirement on superannuation, death retirement, physical incapacity or disability. The concept of gratuity underwent a marked change with the enactment of the Payment of Gratuity Act, 1972. Gratuity payment is now just like the employer's provident fund contribution. It is a payment over and above pension and provident fund [(1967) 1 L.L.J. 114, 129 (S.C.)]. The payment is no longer voluntary. In the implementation of the Act problems have arisen relating to the definition of "employee", in section 2 (c), "fifteen days wages" in section 4 etc., due to imprecise drafting. The present book provides lucid commentaries on the provisions of the Act. The decision in *Central Bank of India* v. *Ramamoorthy*, (1978) 52 F.J.R. 490 holding that the Act does not restrict payment of gratuity only to employees appointed after its coming into force and an employee who was in service on the date the Act came into force, *viz.*, 16th September, 1972, and had by then rendered continuous service for more than 5 years would be entitled to claim gratuity under the Act, seems to have escaped notice. The Rules framed under the Act of both the Union and the State Governments are incorporated. The book also contains Gratuity Calculator. It will serve as a dependable guide to the subject.

XVIII. SUPREME COURT ON CRIMES (1950 to September, 1978) by *S.M. Pisolkar*, First Edition, 1978. (Published by C.C. Vora, Law Booksellers and Publishers, Ahmedabad-380001) Price Rs. 32.50.

In the field of crime and punishment we are governed by enacted law. The letter of the law is found in the sections; the spirit of the law has to be gleaned in a large measure from the decisions of the superior Courts. The Supreme Court has ever since its inception in 1950, rendered a large number of decisions on crimes laying down fundamental principles on the basis of which dispensation of criminal justice is to be carried out. These principles laid down in as diverse circumstances as possible have been collected topicwise and presented in the present book under 259 headings. This enables the reader to know at a glance what light has been thrown by the Supreme Court on a particular point of difficulty. The common questions that come up before the Courts are covered by the author. If the odd points that sometimes emerge from the decisions had also been noticed, the book would be even more helpful. Some typographic errors great the eye. On page 122 "*autrefoise acquit*" should be "*autrefois acquit*", on page 383 "repelled" should be "repealed" on page 385 "jury" should be "jury". The book covers fairly numerous decisions and the statement of principles is lucid and adequate. The book will be serviceable both to criminal lawyers and the judiciary alike.

XIX. PROPERTY PROBLEMS IN SALE by *T.B. Smith*, 1978 (Published by Eastern Law House Private Limited Calcutta and Sweet & Maxwell Limited) London.

This book contains the Tagore Law Lectures delivered by Prof. T.B. Smith Q.C., an eminent Jurist and distinguished graduate of Oxford and Edinburgh Universities, at the University of Calcutta in Decmber 1977. His reflections and solutions to Property Problems in Sale though comparative have been primarily from the view point of a Scots lawyer which he is. The law relating to sale of goods in India is laid down in the Indian Sale of Goods Act, 1930, which is modelled on the British Sale of Goods Act, 1893. The British Act has latterly come in for critical reappraisal, particularly its "passing of property" or title doctrine. The Twelfth Report of the English Law Reform Committee on "Transfer of Title to Chattels" has made a number of recommendations In 1974, a Committee of Government Experts under the auspices of the International Institute for the Unification of private Law has proposed a draft uniform law on the Acquisition in good faith of Corporeal Moveables with a very different philosophy from the *nemo dat quod non habet* provisions in sections 27 to 30 of the Indian Sale of Goods Act and sections 21 to 25 of the British Sale of

Goods Act. Most jurisdictions in the United States alse have acepted Article 2, section 2-401 of the American Uniform Commercial Code which rejects altogether the British "passing of property" doctrine. Changes effected in the provisions of the British Act in the light of changing conditions and pressures are bound to have their repercussions here also. This is one of the several problems projected by Prof. Smith. Problems relating to the passing of property and risk, the effect of illegality, the relationship between sale and security and protection of purchasers in good faith have been discussed testing the solutions contained in the British and the Indian Acts by reference to a wide range of comparative solutions including the Uniform Commercial Code of the United States, the Uniform Law on International Sale of Goods etc. They are golden words of wisdom that "in the context of law reform it is only by the discipline of questioning ruthlessly the conclusions of others and one's own tentative theories that one is likely to reach reasonably satisfactory provisional solutions. Then they must be exposed to the comment and criticism of those qualified by reflection and experience to state their views on the matters under review". The instant book is one to read, understand and ponder.

XX. Desai on the Indian Easements Act, 1882, Edited by *V R. Randive*, Twelfth Edition. 1978. (Published by Vora Prakashan, Ahmedabad-380001). Price Rs.13.

The Indian Easements Act applies *proprio vigore* in most of the Indian States and recourse to its provisions is had in the States of Punjab and Bengal as principles of justice, equity and good conscience. The law of easements is itself a development of the equitable principle that the good of the public lay in a person enjoying his property (land or building) so as not to disturb the enjoyment by the neighbour of his property. Twenty-two years after the last edition was published the present edition has emerged. During these two decades and more a number of decisions on the provisions of the Act have been rendered. These have been taken into account in the present edition. In the page entitled Addenda, lines 10 to 15 it is stated: "The plain reading of section 5..... together with illustration (b), it becomes clear that a right of way which do doubt as an apparent easement, it is not a continuous one, for depends on the enjoyment of a continual character by the act of man." The languageis unmeaning faulty and defective possibly due to typographic mistakes. In Appendix A a summary is provided of the Easements Act provisions and Appendix B contains questions and answers. The book is essentially one for students of law who will find it profitable to go through it.

XXI. Cases and Materials on Law of Accounts by *N. Krishnama Charlu* and *N. Janardhan*. Second Edition, 1979. (Published by the New Gujarat Law House, Three Gates, Ahmedabad.) Price Rs. 25.

Books of account are valuable evidence if regularly kept in the ordinary course of business, of the justice of one's claims. With the phenomenal expansion of trade and commerce the law relating to accounts has gained in importance. The law of accounts stems from accountability arising out of a widely ramified network of relationships such as trustee and beneficiary, principal and agent, partners, banker and customer and so on. The provisions of the Limitation Act have also an impact. The book under notice is divided into 11 Chapters, dealing respectively with (1) Accounts, accounting and books of account, (2) Open and current account, (3) Mutual, open and current account, (4) Stated or settled account, (5) Acknowledgments, (6) Payment on account of debt and the Law of Appropriation, (7) Evidentiary value of accounts, (8) Suits relating to accounts, (9) Cause of action and pleading. (10) Limitation, and (11) Decrees. Synopsis headings are provided under each Chapter and the relevant case-law has been considered. The scheme of accounting has been kept outside the scope of the book. The book is written in a simple and easy style and will be of great assistance to practising lawyers and to all concerned with the law pertaining to accounts.

XXII. Law of Attachment and its Removal, by *B.K. Amin*, 1977. (Published by the New Gujarat Law House, Three Gates, Ahmedabad.) Price Rs. 21.

The word "attachment" is not defined in the Civil Procedure Code. Though other statutes like the Income-tax Act for instance have used that term it is not defined in any of them either. Literally 'attachment' would signify tying or fastening importing thereby some restriction. In legal parlance it would

mean restrictions imposed by order of Court prohibiting transfer. If the property attached is movable property it would mean actual seizure of the article. Attachment of property is an important step in the execution of a decree and the Civil Procedure Code contains detailed rules relating to attachment of different kinds of property. Questions concerning the validity of an attachment arise frequently before the Courts for adjudication. It has become a fruitful source of litigation. The instant book deals with the subject of attachment in 12 Chapters which are devoted to (1) Introduction, (2) Where from and what cannot be attached, (3) Miscellaneous provisions regarding attachment, (4) Alienation after attachment, (5) Rateable Distribution, (6) Incidental references to attachment, (7) Rules 43 to 48, (8) Rules 49 and 50, (9) Rules 51 to 53 and 56, (10) Attachment of immovable property, (11) Rules 55 and 57, (12) Order 21, rule 42 and Order 38, rules 5 to 13. The exposition is cleor and under appropriate topical headings. The discussions high-light the points involved referring to all the relevant provisions. The book seems to be the first of its kind and is sure to be helpful to the legal professsion.

XXIII POLICEMAN'S GUIDE TO CRIME AND CRIMINAL INVESTIGATION by *Sadhu Singh Mangat* 19‑9 Edition (Published by: Eastern Book Company, 34, Lalbagh, Lucknow-226 001) Price Rs 40.

The author is a retired detective, ex-Tanzania Police Force. The book has resulted from his interest in criminology and his observation of investigation of homicide cases in Punjab. According to him among the causes for the failure of many prosecutions for offences are: (1) the police's predilection to secure oral evidence and failure to exercise scientific investigation; (2) their inveterate habit of false accumulations, exaggerations and securing the services of professional paid witnesses ignoring the chance eye-witness to the crime and padding up fake stories invented by the complainants and the police; (3) failure to explore the true facts and concocting stories based on pre-conceived theories with a view to give boost to their efficiency. The present book is intended to assist policemen in obtaining a working knowledge of the law in a procedure contained in the Penal Code, Criminal Procedure Code and the Evidence Act.

The book is divided into three Parts. Part I gives in a nutshell the fundamental principles of criminal law as found in the above enactments, the matter for study by a policeman engaged in criminal investigation. Part II is devoted to practical investigations of some of the serious crimes based upon the author's experience in Africa. He advises an investigator who is called upon to investigate an alleged crime to ask himself three questions (a) Has any crime been committed?, (b) what crime?, and (c) who did it? The book is designed to serve as a key to the unravelling of these questions. Part III contains illustrative cases furnishing real tests of the technique of crime investigation discussed in the book. The approach to the subject is analytical and the book is written in a simple and interesting manner. Policemen will profit a great deal by going through the book.

XXIV. SELECTED DECISIONS OF THE GUJARAT CIVIL SERVICES TRIBUNAL, Vol. I. (Published by Vora Prakashan, Ahmedabad-380001). Price Rs. 14.

To provide a quick and inexpensive forum for Government and Panchayat servants of non-Gazetted status, of about 3 lakhs of persons, who have to come in final appeal to the Goverment with regard to their service problems and any disciplinary action to be taken against them, the Gujarat Government has set up the Gujarat Civil Services Tribunal with effect from 15-2-1977 under the provisions of the Gujarat Civil Services Tribunal Act, 1972. The Tribunal functions as the final appellate authority in lieu of the Government and its decisions cannot be questioned before the civil Courts or any other authority. In the Constitution of the Tribunal there is a judicious balance of administrative and judicial experience. A striking feature of the arrangement is that the appeals before the Tribunal do not require any Court fee nor process fee or other expenditure to the appellant. Even copies or judgments are supplied free to the parties to the appeals. An inexpensive and quick remedy has thus become available to the non-Gazetted Officers and Panchayat employees. It is interesting to note that in 1978 about 700 appeals were received and as many as 500 were disposed of during that very year.

Many of the decisions, in regard to questions relating to service matters and discipline, have laid down guidelines and precedents for the future to be followed by the heads of departments and concerned officers. They will also go a long way in helping the Government and Panchayat employees. Publication of selected judgments will be found useful by the Bench and Bar also.

The present volume contains 21 selected judgments given during 1977. Notes on the judgments are also provided. A Subject Index is also attached. The publication deserves high commendation.

XXV. India Demands English Language, Edited by *Isac Mathai*. First published in 1960. Published by Mathai Publications, Blavatsky Lodge, French Bridge, Bombay-7. Price Rs. 3.

This is a collection from the speeches and writings of eminent and distinguished persons in different walks of life bearing on the need for English being continued in this country for the various purposes which it has been serving so far. The speeches and writings are of persons like Dr. C.P. Ramaswami Iyer, Pothan Joseph, General Cariappa, K.M. Munshi, Jawaharlal Nehru, Mirza Ismail, C. Rajagopalachari, C.D. Deshmukh and other savants. In the years since the advent of Independence one of the main causes retarding national integration is the language chauvinism particularly of the North and its attempt to impose Hindi on the Southern States by displacing English. The more the North is trying to push in Hindi the more has been the insistence of the South to retain English and deny primary to Hindi over other regional languages English is an international language. It has a rich literature. It is not a stranger to this country. All professional education and research work have to be imparted or undertaken in the English language. Hindi is yet to develop. It has no comparable literature. It is not the language of even a majority of Indians to elevate it over the other regional languages. And Hindi became the official language of the country by a majority of just one vote. These are arguments with which we are familiar. The booklet under notice presents a wealth of materials against the denigration of English.

LAW "RELATING TO COSTS CODIFIED AFTER CIVIL PROCEDURE CODE (AMENDMENT) ACT (CIV OF 1976)".

By

THIRU N. KRISHNAMURTHY, B. COM., B. L.,
Pondicherry.

One of the important changes introduced by the Civil Procedure Code (Amendment) Act, 1976 is to empower the Court to impose costs on the party litigant who causes delay in the disposal of cases. The new section 35-B clearly lays down the circumstances or conditions under which Court may make an order for costs to be paid by one party to the other. In fixing the costs, the Court will have to form an opinion in respect of the expenses incurred by the party for attending the Court on the date when the opposite party causes delay in the progress of trial as contemplated under clauses (*a*) and (*b*) of section 35-B of the Civil Procedure Code. The relevant section is reproduced below:

S 35-*B*. If, on any date fixed for the hearing of a suit or for taking any step therein, a party to the suit.—

(*a*) fails to take the step which he was required by or under this Code to take on that date, or

(*b*) obtains an adjournment for taking such step or for producing evidence or on any other ground,

the Court may, for reasons to be recorded, make an order requiring such party to pay to the other party such costs as would, in the opinion of the Court, be reasonably sufficient to reimburse the other party in respect of the expenses incurred by him in attending the Court on that date, and payment of such costs, on the date next following the date of such order, shall be a condition precedent to the further prosecution of—

(*a*) the suit by the plaintiff, where the plaintiff was ordered to pay such costs,

(*b*) the defence by the defendant, where the defendant was ordered to pay such costs.

From the above it is apparent that the Court can invoke section 35-B only if the conditions laid down therein exist and not otherwise. The essential pre-requisite for imposing costs is that the party who claims reimbursement of expenses must have attended Court on that date when the opposite party caused the delay. In the alternative, if the party did not attend Court on a day where delay was caused by the opposite party the Court has to proceed with the next stage in the suit. In forming an opinion as to reasonable expenses, the Court may consider the travel expenses incurred by the party from the place of residence to the place of Court and charges for food if any that the party had to incur on account of being away from his house for the whole or part of a day. Except these two items no other consideration can move the Court where the question of costs for the delay by one party or adjournment of a case arise. In this connection the word 'party' in section 35-B appears to refer to the litigant as plaintiff/petitioner or defendant/respondent as the case may be. There is no warrant to say that the Advocate engaged by a client is a 'party' for the purpose of claiming costs under section 35-B of the Act. This position is free from doubt as the Code itself refers to 'party' and 'pleader' separately under other provisions *vide* Order 1, rule 10A, Civil Procedure Code regarding power of Court to request the pleader to appear for a party. See also Order 3, rule 1, Civil Procedure Code. As a result of these conclusions it is to be noted that the Court's powers which were formerly exercised in a controversial and irrational way, have become well-defined, circumscribed to the needs and circumstances of each case after the commencement of the new section 35-B. Having thus laid down a specific provision in this regard it is not open to the Court to invoke section 35 (1) or 151 or any other provisions of the Rules made by High Court while dealing with the situations contemplated under section 35-B of the Civil Procedure Code. Even the Court's power to order costs for adjournment under Order 17, rule 2, Civil Procedure Code is duly regulated as per the new section 35-B. To illustrate, where a party incurred expenses to attend Court within 20kms. from his place, the Civil Rules of Practice provide for travelling expenses at the rate charged by public transport conveyance or a taxi or train depending on the class to which the party can be classified as a witness. In other words, where the reasonable expenses would be Rs. five or ten, it would be illegal and without jurisdiction for any Court to impose costs of Rs. 50 (Rs. fifty) or one or two hundreds and so on.

Thus after introduction of section 35-B, with effect from 1st February, 1977, rule 27 of the Civil Rules of Practice cannot be valid in so far as it is inconsistent with the new section 35-B of Civil Procedure Code to the extent the former rule stipulates "the fee of the

pleader'' to be included as costs for adjournment. Similarly the monetary limit of Rs. 10 in the case of Munsif Court and Rs. 20 in the other Courts as lawyers. fee laid down in rules 22 and 27 of the Legal Practitioners Fees Rules, 1973 cannot be invoked or supplemented for the purpose of fixing costs for adjournment and delay by one party. The intention and spirit of the new section is to curb and reduce the burden of paying the advocate fee by the party who caused the adjournment of the case since every advocate normally attends Court daily as part of his professional job. It is also intended to prevent indirect gains to pleaders or advocates by way of several costs in one and the same suit, so that such indirect gains may not be disproportionate to the total costs at the final disposal of suit or proceedings. Incidentally instances are not rare where adjournments or delay by one party was sought without the full knowledge of its implications by the illiterate litigant coming from rural areas.

A notable achievement of the amendment of the Civil Procedure Code is to consolidate and codify the law relating to costs in a litigation with the ultimate object of scientific, prudential and uniform application of the legal system for the benefit and welfare of the public litigant. The various provisions of the Civil Procedure Code on the subject are given below:

1. *Costs (ordinary)*: *Section* 35.—Costs of and incidental to *all suits* shall be in the discretion of the Court.

   Section 35-*B* (*new*).—Costs for causing delay or obtaining adjournment on............or any ground.

   Order 20A. (*new*) *rules* 1 *and* 2.—Expenses which are to be considered for award of costs under section 35 after final disposal.

2. *Compensatory costs*: *Section* 35-A—Compensatory costs to a successful party if he objects that the claim or defence made by opposite party is shown to be false or vexatious in a suit or other proceedings.

Section 95 of the Civil Procedure Code does not come within the purview of costs though it refers to compensation for wrongful arrest attachment or injunction.

In fine, any party who pays for costs should bring it within any of the above provisions and not otherwise. Conversely the Court has power to act under one or more of the above provisions with a discretion limited by the newly introduced section 35-B and Order 20-A of Civil Procedure Code. To illustrate, if after commencement of trial one party takes an adjournment on the grouud that an application for transfer of the suit had been filed before a District Court or other Appellate Court, the opposite party may pray the Court to award costs as per section 35-B of the Code only. However it is not free from doubt as to whether the District Court or other Appellate Court while allowing the transfer application is justified in imposing costs in favour of the same opposite party on the same ground of causing delay in the progress of trial of the suit. Of course award of costs to either party on such transfer O. Ps. may be regulated as per section 35 of the Code. This can be only in favour of the party who suceesds in the O. P. proceedings, and not otherwise. Therefore award of a certain amount as compensation to be paid by the party who applied for transfer, as condition for allowing the prayer appears to be highly debatable. Award of compensation to a party in a litigation is not contemplated under the Code except on vexatious or false claims or defences as per section 35-A of the Code. To conclude; the codified law relating to costs is an important attempt to develop social justice to the poor litigant so that the Judiciary can act with greater awareness of the responsibility towards the Public.

"THE TAMIL NADU DEBT RELIEF ACT, 1976 (PRESIDENT'S ACT XXXI OF 1976) AND THE CIVIL COURTS".

By

P. MOHANA CHANDRAN, *Advocate, Kuzhithurai.*

The Tamil Nadu Debt Relief Act, 1976 (President's Act XXXI of 1976), hereinafter referred to as the Act, came into force on 29th July, 1976. It statutorily wiped out the 'debt' due from certain classes of debtors. Proceedings under the Act have to be conducted by the tribunals constituted under the Act and parties to such proceedings shall not be represented by legal practitioners. The Act does not specifically say as to what a civil Court shall do if a party before it claims that he is a 'debtor' as defined in the Act. Nevertheless it looks as if the civil Court has got the jurisdiction to adjudicate the points as to whether the debtor is a 'debtor' as defined in the Act and whether the debt due from him has been statutorily wiped out and whether the suit is maintainable or whether the suit has abated.

Section 3, clause (*e*) of the Act defines the word 'debt' thus: " 'debt' means any liability in cash or in kind, whether secured or unsecured and whether decreed or not, but does not include arrears of taxes due to the Central Government or a State Government or a local authority".

So much so, even unsecured debts (oral loan, promissory notes etc.), come within the definition of the term debt. Section 4, clause (*a*) reads thus:

"Every debt advanced or incurred before the commencement of this Act (including interest, if any), and payable by the debtor to the creditor shall be deemed to be wholly discharged" (Note the words "shall be deemed to be wholly discharged"). Section 4, clause (*e*) reads thus:

"Every movable property pledged by a debtor shall stand released in favour of such person and the creditor shall be bound to return the same to the debtor forthwith" (Note the words "shall stand released").

Section 4, clause (*f*) reads thus:

"Every mortgage executed by the debtor in favour of the creditor shall stand redeemed and the mortgaged property shall be released in favour of such debtor" (Note the words "shall stand redeemed").

The debt automatically stands wiped out. Property pleadged is automatically released and the property mortgaged is automatically redeemed. An order of the Tahsildar (the tribunal) is not necessary to wipe out the debt or to release or redeem the property.

An important point to be noted is that the tribunal constituted under the Act cannot entertain an application filed by a debtor if the debt is not a secured one. Section 5, sub-section (2) reads thus:

"A debtor referred to in clause (*e*) of section 4 may make an application to the Tahsildar having jurisdiction over the area within which such debtor ordinarily resides, for an order releasing the mortgaged property and for the grant of a certificate of redemption". Debtor referred to in clause (*f*) of section 4 is a debtor who has mortgaged immovable properties. The word used in both these sub-sections is "may". Sections 5 (2) and 6 (1) are the only provisions which enable a debtor to file an application before the Tahsildar and these relate to cases where movable properties have been pledged or immovable properties have been mortgaged. What shall the 'debtor' do if his indebtedness as on the date of commencement of the Act is under a promissory note or under an oral loan transaction (unsecured debt)? As pointed out supra, the Act applies even to unsecured debts. In the case of unsecured debts, it is enough if the debt is wiped out. The debtor needs nothing more. Hence the tribunal is not given powers to deal with applications by the debtors in cases where the debt is an unsecured one. In the case of secured debts, the mere wiping out of the debt may not be sufficient, because the debtor may have to get back the property pledged or mortgaged and hence the tribunal is invested with powers to deal with such

cases on the application of the debtor. Section 5, sub-section (1) reads thus:

"Every creditor referred to in clause (*e*) of section 4 shall, within such period as may be prescribed furnish to the Tahsildar having jurisdiction over the area where such creditor has his ordinary place of business, a statement in such form as may be prescribed containing the names of all the persons who have pledged movable property with him, the nature and description of such property the amount advanced and due as on the commencement of this Act, the rate of interest and such other particulars as may be prescribed".

Creditor referred to in clause (*e*) of section 4 is the creditor to whom movable properties are pledged. A creditor is to file a statement only in cases where movable properties are pledged. No other provision of the Act requires the creditor to file such a statement. What shall the creditor do in cases where the debt is not a secured one?

If, in the light of the above discussion, the provisions of the Act are analysed, one will be convinced that the civil Court has got jurisdiction to adjudge the dispute as to whether the Act statutorily wiped out the debt of the debtor who is before the Court and whether the suit is maintainable or has abated.

Section 4 (*b*) reads thus:

"No civil Court shall entertain any suit or other proceeding against the debtor for the recovery of any amount of such debt (including interest if any)

Provided that.........." Section 4, clause (*c*) reads thus:

"All suits and other proceedings (including appeals, revisions, attachments or execution proceedings) pending at the commencement of this Act against any debtor for the recovery of any such debt (including interest, if any) shall abate.

Provided that ...." Only the civil Court before which a suit is filed can adjudge the question as to whether the suit is maintainable in view of section 4 (*b*) or whether it has abated in view of section 4 (*c*). For adjudging this question it has to adjudge as to whether the debt has been statutorily wiped out under section 4 (*a*). For adjudging this question the civil Court has to adjudge the question as to whether the debtor is a 'debtor' as defined in the Act. So much so, the civil Court is competent to adjudge the above points if the suit is by a creditor against a debtor. The debtor can non-suit the plaintiff-creditor even if he has not approached the Tahsildar even in cases where he is entitled to prefer an application before the Tahsildar.

This writer is of the view that the civil Court is competent to adjudge whether the debt has been statutorily wiped out even in cases where the debtor is the plaintiff. As stated supra, by the operation of section 4 (*a*) the debt shall be deemed to be wholly discharged, under section 4 (*e*) movable property shall stand released and under section 4 (*f*) immovable property shall stand redeemed. A person is not entitled to keep the property pledged or mortgaged once the debt is paid and the person who pledged or mortgaged is entitled to get it back. Same is the case where the debt is statutorily wiped out. Properties pledged shall stand released and mortgages shall stand redeemed and the debt shall stand wiped out and hence the erstwhile creditor is not legally entitled to keep the property in his custody. Sections 5 and 6 provide speedy procedure for the erstwhile debtor to get at the property. But the Act does not either expressly or by necessary implication oust the jurisdiction of the civil Court to entertain a suit by an erstwhile debtor for the recovery of the property pledged or mortgaged. But the only reservation is that the civil Court shall not have jurisdiction in cases where the Tahsildar has already adjudged the dispute in cases where he is competent to adjudge.

In cases where the debtor is the defendant as well as in cases where the debtor is the plaintiff, the civil Court is not carrying out any proceeding under the Act. It only adjudges the point as to whether the debt has been statutorily wiped out under the Act etc. Consequently, parties are entitled to be represented by legal practitioners before the civil Court.

"MORATORIUM AND LIMITATION".

By

P. NATARAJAN, M.A., B.L., *Advocate, Chidambaram.*

Debt Relief Laws have been in force from 15th January, 1975, to 14th July, 1978. During this period creditors were barred from filing any suit for recovery of any debts due by agriculturists. Execution applications also could not be filed. In the case of non-agriculturists, from 22nd July, 1975 to 14th July, 1978, the bar on recovery of debts was in force. In the various enactments passed during the aforesaid period, exclusion of time for the purpose of limitation was provided by means of a section. From the definitions of debts given in any of these enactments, it is not clear to which debts these enactments would apply. That is to say, whether it would apply to debts contracted prior to these enactments, or during the currency of these enactments?

We have got two judgments in this regard. One was delivered by Justice Paul in *Seth Khiaram* v. *Balaji Singh*[1], and another by Justice Gokulakrishnan in 1979 T.L.N.J. 38. Justice Paul had decided in that case that the debt which was incurred after the Act, will not be hit by the Act and the protection could not be afforded to such debtors. He had occasion only to consider a debt which was contracted subsequent to Act XVI of 1976. He had no occasion to refer to the Act I of 1977, Act III of 1977 and Act II of 1978. In the later case, Justice Gokulakrishnan had held that Acts XV of 1976, II of 1978 and XL of 1978 are independent Acts and relief for the debt that existed at the time of coming into force of these Acts, can be afforded. But in none of these cases, the question of limitation was considered fully. If a debt is contracted during the currency of moratorium and the creditor had thought *bona fide* that the Act would apply to such debt and had refrained from filing the suit, is his suit to be dismissed as time-barred? In Act XV of 1976, as well as Act XVI of 1976, section 5 and section 6, respectively, state that the creditor can exclude the time during which the institution of suit was barred. If a debt is contracted during the currency of moratorium the creditor would not take a risk by filing the suit, for such a suit will not be rejected or stayed, but dismissed. There are decisions to this effect. To illustrate, if a debt is contracted in February, 1976, can the creditor file a suit in March, 1976? In *Veerana Konar* v. *Kattapuliambalam*[2], Justice Jagadeesan had made certain observations which are quite useful; but it appears that this was not brought to the notice of the two Judges who decided the above 2 cases. Justice Jagadeesan had clearly pointed out that a creditor lending money during the period of statutory bar will not be permitted to add to the normal period of limitation any period of statutory exclusion prior to the date of his lending. It is quite logical that the period subsequent to the date of lending till the date of removal of the bar, should be permitted to be added to the normal period of limitation. Otherwise, it will work hardship to the creditors. When the enactments mentioned above do not definitely say that the provisions of these enactments would apply only to those debts which are in existence on the date of the coming into force of these Acts, the creditors must be given the benefit of adding the period of bar to the normal rule of limitation.

---

1. (1977) 90 L.W. 572.

2. (1960) 73 M.L.W. 686 : (1960) M.W.N. 856.

THE NEW TAMIL NADU DEBT RELIEF ACTS

By

S. GOVINDARAJAN, B.SC., B.L., *Advocate and Government Pleader, Chidambaram.*

There is a Tamil sayirg: "யானை பிரசவித்து கோழி முட்டையிட்டது" That is the feeling one gets on going through the provisions of the Tamil Nadu Amending Act (XXXI of 1976) and the Tamil Nadu Debt Relief Act, 1979. Tamil Nadu Act XXXI of 1976 is itself a black legislation, ill-conceived and ill-drafted. By the Amending Act, the preamble is sought to be amended. The amended preamble pompously proclaims that the Act seeks to give relief and protection to certain sections of debtors from the usurious practices of pawn-brokers, money-lenders and other non-institutional sources of credit.

If that is the intention of the Legislature, why has this not been incorporated in the body of the Act, in defining 'creditor' as a pawn-broker, money-lender or other non-institutional source of credit indulging in usurious practices. The terms 'money-lender' and 'non-institutional sources of credit' are delightfully vague. Any person who lends money is a 'money-lender', or does the Government want the term to refer to professional 'money-lenders'. The term 'non-institutional sources of credit' will cover all classes of creditors.

Why is it that the term 'debt' has not been defined properly to refer to only usurious loans? What is meant by the term 'usurious practice'? As is common knowledge, the person guilty of usurious practice of the worst type in India is the Nationalised Bank charging high rate of interest for the loans with quarterly or half-yearly rests which in actual working amounts to charging high rate of compound interest. Curiously, the loans due to these Banks are exempted from the purview of the Act.

When the Government has passed a comprehensive Debt Relief Act, to cover all classes of persons what is the necessity to retain this obnoxious legislation which can as well be repealed?

As regards the new Debt Relief Act, 1979, it is extremely vague in its contents leaving many matters to doubt, conjecture and speculation and unrealistic in its purport, objective and actual working. The statement of objects and reasons states that the new Act is intended to grant relief by way of scaling down of debts only instead of liquidation and scaling down of debts as provided under Tamil Nadu Act XL of 1978. This could have been easily achieved by suitable amendments to Tamil Nadu Act IV of 1938 and Act XXXVIII of 1972.

The Act exempts from its purview debtors who are assessees of income-tax, sales-tax, profession-tax and property-tax. For this purpose, provision has been made for the grant of certificate by the Tahsildar and the executive authorities of local bodies. The income-tax and sales-tax authorities are a law unto themselves. They never grant certificates for the assessment. They seem to forget that the details or particulars of assessment and not the fact of assessment is confidential. The Government must issue suitable directions to these authorities for the grant of certificates for assessment. In the case of profession-tax, in respect of the employees of Companies and Government Departments, the deduction is made at source and a consolidated payment is made to the local authority who is not in a position to grant a certificate of assessment for any particular individual. In many cases the employees escape assessment to profession-tax.

In order to obviate this difficulty, provision can be made in the Act by introducing in section 3 (3), Proviso Cl. IV "An employee getting an income of Rs. 200 per month and above" and also providing for the grant of salary certificate by the concerned company or head of the Government Department (salary disbursing authority). This will make clear the intention of the legislature to grant relief to persons getting an income of Rs. 200 per month and more. This will save the creditors from the enormous difficulties which they have to face in getting the certificate of assessment. Otherwise, the main object of the legislation is frustrated in enabling well-to-do persons getting relief at the expense of poor creditors,

Moreover, in the case of Partnership Firms which are debtors, if there is an assessment of tax on the firm, it must be made specific that the individual partners cannot claim benefits. Similarly, in the case of proprietory firms when there is an assessment on the firms, the proprietor-debtor should not claim benefits. Provision must be made for these things.

In the case of property tax, the mode of calculation of annual rental value and capital value are arithmetical juggleries, which necessitate the summoning of the concerned executive authorities as expert witnesses. This could have been made simpler by granting exemption on the basis of the property tax levied and paid.

Exemption is granted in respect of debt payable to widow or minor child, whose parent or father is dead provided the right to recovver, does not arise by assignment. The Act must also add to the proviso the right to recover debts due to inheritance as such debts become payable to the estate of the deceased and not to the individual concerned.

Under Chapter II which contains the scaling down provisions a lot of confusion is exhibited. For example, in the proviso to section 7 (*i*) it is stated that debts already scaled-down under Tamil Nadu Act IV of 1938 and Act XXXVIII of 1972, cannot be scaled down under this Act. It is not made clear whether the scaling down referred to above, is by an order of Court on the application prescribed or on account of voluntary scaling down by the creditors at the time of filing of suit.

Section 8 is the scaling down provision which leaves many matters to doubt, surmises and conjectures. The provision as such applies only to cases where payments have been made. What is to happen to debts where no payments have been made? Is the creditor entitled to interest or not in such cases? Further the provision as it stands, will result in various anomalous positions.

Under section 8 (*i*) of the Act, when the debtor pay 1½ times the principal amount by way of principal or interest, the entire debt stands discharged. Under section 8 (2) of the Act when the amount repaid by the debtor falls short of 1½ times the principal amount, the creditor will be entitled to recover only the difference between the amount repaid and 1½ times the principal amount. The creditor can also claim interest at the contract rate or 9% per annum whichever is less on the scaled down amount as per section 12 of the Act.

In actual working, this will lead to anomalous results. For example, if *A* had borrowed Rs. 1,000 from *B* bearing interest at 9% per annum and he has paid Rs. 5 towards the same, as per section 8 (2), *B* will be entitled to claim Rs. 1,495 plus interest at 9% per annum, and for a period of 3 years, the interest may come to about Rs. 403.65. *B* can therefore file a suit for recovery of Rs. 1,898.65.

Principal amount	Rs. 1,000
Interest	9% per annum
Amount paid	Rs. 5
1½ times the principal amount	Rs. 1,500
As per section 8 (2) the scaled down amount comes to Rs. 1,500—Rs. 5=Rs. 1,495	
As per section 12 interest at 9% per annum for 3 years on the scaled down amount	Rs. 403.65
Total amount recoverable	Rs. 1,898.65

Whereas ordinarily without the scaling down of the debt as per section 8 (2), the creditor can recover only Rs. 1,000 plus interest of Rs. 270 making a total of Rs. 1,270. This is obviously and *ex facie* absurd.

The usufructuary mortgage debts are dealt with under section 9. Supposing a mortgagor transfers the equity of redemption to a third party by sale or otherwise with a direction to discharge the mortgage debt, it is not made clear whether such a transferee will be entitled to claim the benefits or not,

Coming to section 14 which provides for payment of costs, it is most iniquitous inasmuch as it deprives the creditor of the amounts actually spent by him. Section 21 which provides for setting aside sales held on or after 14th July, 1978 is conflicting and contradictory to the scaling down provisions. A debtor may be entitled to the benefits of the Act and will be entitled to have the debt scaled down and apply for amendment of decree. But if his property has been sold before 14th July, 1978 and even if not confirmed, he cannot apply to have the sale set aside. In case he applies for amendment of decree what is to happen to the sale already held? These things have not been made clear. Section 31 repeals Tamil Nadu Act XL of 1978 except section 29. This is ridiculous. The provisions contained in section 29 of Tamil Nadu Act XL of 1978 could have been incorporated in the Act itself.

The saving provisions contained in sections 32 and 33 are the most absurd provisions. No doubt by the repeal of Tamil Nadu Act XL of 1978, debtors cannot claim any benefits thereunder. Similarly decrees passed as per the provisions of the Act and which have been duly discharged cannot be reopened. But what about pending suits and decrees already passed, but not satisfied in full. Are the creditors entitled to have their claims amended as per the provisions of this Act?

A number of things have been left to the intellectuals, legal luminaries, eminent jurists and Judges to give a proper interpretation to the provisions of this Act.

It will therefore be better if the Government introduces an amendment to make these things clear.

THE LATE DR. P. V. RAJAMANNAR.

The passing away of Dr. P. V. Rajamannar, our former Chief Justice, on the 1st of October, at the age of seventy-nine, will be received with genuine and profound regret by the members of the Bar. It has removed from our midst a personality who had distinguished himself in many fields and made a great reputation. Judge of the High Court from 1945 and Chief Justice from 1948 to 1961, Dr. Rajamannar had won alike the esteem of his colleagues and the satisfaction of the members of the Bar. The late Mr. T. R. Venkatarama Sastri—a stalwart at the Bar of those days and one who could take a balanced and detached view—used to say that of all the Judges before whom he had appeared and argued during his long career at the Bar, Justice Rajamannar was, barring few exceptions, easily the best. Dr. Rajamannar was a great Judge because he was a good Judge. Receptive to arguments, sensitive to the finer nuances of the law, a brilliant student of Legal Theory and Jurisprudence, a great admirer of Telugu, Sanskrit, English and French lore and literature, and endowed with a humanistic outlook, Dr. Rajamannar was able to rise above the technicalities of the law and render substantial justice. His judgments were marked by fine marshalling of the facts and a clear grasp of the law. He was in no sense a "committed judge" nor a "judicial activist"; nevertheless his exposition of the law was always progressive and in tune with the spirit of the law. A great quality of Dr. Rajamannar was his capacity to discern merit in others and give suitable recognition. Some of his nominees for appointment to the Bench were men of great merit and lucrative practice. The fact that he was able to secure their services at the sacrifice of their considerable income and the shortness of the period during which they could serve on the Bench testified abundantly to his great persuasive powers.

Dr. Rajamannar's brilliant academic career, his rapid rise at the Bar, his masterly handling of some of the most sensational cases of recent times including the Lakshmikanthan murder case, his reputation as a playwright in Telugu, his sense of humour and ability as a raconteur, his Chairmanship of various bodies like the All India Sangeet Natak Akademi and Boards of Studies in different Universities and, above all, his Chairmanship of the Committee set up by the then Madras Ministry to go into the Centre-State Relations, etc. are matters of familiar knowledge. By his passing away an eminent legal luminary, a distinguished scholar and writer, and a patron of arts has been lost to the country.

Dr. Rajamannar has died full of years and honours. May his soul rest in peace. We offer our sincere condolences to the members of the bereaved family.

REFERENCE IN THE HIGH COURT ON 8TH OCTOBER, 1979 TO THE DEMISE OF DR. P. V. RAJAMANNAR.

THE HON'BLE THE CHIEF JUSTICE (RAMAPRASADA RAO, C.J.) SAID:

Dear Colleagues,

Mr. Advocate-General and my dear members of the Bar:

With a deep sense of poignancy and sorrow I am to refer this day to the demise, on the 1st of October, 1979, of the learned and respected Dr. P. V. Rajamannar, our first Indian Chief Justice, who headed our judiciary in the post-independent mini era, which demanded a great sense of responsibility in a changed juristic environment. Born on 10th May, 1901, and having had a distinguished scholastic career, by winning many prizes even in the Law College, he joined the Madras Bar in 1924, and was apprenticed to his father, Raja Dharma Pravina Diwan Bahdur P. Venkataramana Rao Naidu. At the age of 43 he was appointed as Advocate-General, Madras, in 1944, in succession to the late Sir Alladi Krishnaswami Iyer. He became a Judge of this High Court in 1945 and three years later officiated as Chief Justice in 1948 of the composite High Court of the Madras State. He was permanent Chief Justice from July, 1948, till he retired on 10th May, 1961, except for a brief period when he acted as the Governor of Madras. He was the youngest to occupy the post of Chief Justice in the independent era. During his period, momentous changes took place, such as the separation of the Judiciary from the Executive, the formation of linguistic States resulting in the establishment of the various High Courts under our Constitution in the south, and finally the ending of the Quarter Sessions (Criminal) which saw the abolition of the Jury system. He headed the fourth Finance Commission. In 1971 he was chosen as the Chairman to delve into the Centre-State relationship. He was the pioneer who recommended a wider base for devolution of revenues for the States. He also suggested the constitution of an Inter-State Council consisting of all the Chief Ministers or their nominees, with equal representation for all the States to examine every bill of national importance before introduction in the Parliament. He was the Chairman of the Board of Studies for Law in the University of Madras, and a full-time Member of the Syndicate. He was the Head of the Board of Studies in Telugu in Sri Venkateswara University and Board of Studies in Theatre Arts. He had the triple honour of having been conferred with Doctorate of Letters and Laws by the three southern Universities, namely, Andhra, Annamalai and Madras Universities.

He was a pet child of the Goddess of Learning and he was taken away on the day when the Goddess of Learning was being propitiated. He died on the day when Saint Shirdi Sai Baba was called to eternal bliss. His passing away synchronised with the Thiru Nakshatra of Sri Vedanta Desikan, and Mahatma Gandhi. Dr. Rajamannar was a multi-oriented personality. He excelled in all known exercises, whether it be philosophy, art, culture, literature and, above all, jurisprudence. The quality of judgments, couched in simple, but illuminating and instructive thought, is yet to be excelled, even today. As a progressive Judge, he gave fillip and dimension to legal literature and created a style by himself, while expatiating intricate legal ethos contained either in Hindu Jurisprudence or constitutional jurisprudence. He created a climate of his own in his Court and gave of his best for posterity of Judges and lawyers to follow and emulate. Our Bar always considered him as a good man and a good administrator. His abject obeisance to his illustrious parents, who moulded his life, reveal his characteristic modesty. His erudition, his learning, his forensic excellence, his humour, his comraderie, are all some amongst his many attributes which we remember on this eventful, but mournful day. He excelled himself as a criminal lawyer also, and whatever field of activity he was in, he came out with laurels and success. Our law journals replicate with his choice wisdom, which is reflected in his illuminating judgments. It is difficult to touch fully upon his Himalayan attainments. As a person, as a lawyer, as a Judge and finally as a Chief Justice, he proved himself to be a rare star in the legal firmament, which had thrown abundant light on national and international

history. He believed in, *absit invidia* (no ill-will; no offence). He was full of *bonne grace,* and was a flower in *bonne compagnie* (good society). He was *bonne et belle* (he was a good and fair man).

The worth of a man is known by the effect of his efforts. By this accepted universal standard, we have known the real worth of Dr. Rajamannar. Man receives sentience from self, harmonious speech and action. Judged from such a perspective, the Doctor proved himself to be a straightforward and cultured personality. Many virtues in him, including uprightness, engendered excellence. He believed in the Vedantic tenet that sublimation is the secret of amelioration. He thus developed a unique intuition of a high order within our own institution. The good in him has led him to beatitude. He was a gentleman of mature understanding and therefore he always rested in humility. He kept his mind placid in all circumstances and was not provoked by any outside sensation. He was a votary of truth which was enshrined in his heart and therefore he gained a place in the hearts of all of us. He made his life vibrant and purposeful. Determination reigned supreme in him. Unto the last he worked for our country and his latest contribution was, as the valued annotator of the Banking laws in our country. He was the very embodiment of well-set principles. He rose to eminence because of his unswerving devotion to the various ideals to which he had dedicated himself. By viewing the world around him as divine and by serving it with truthfulness, our Doctor became divine by himself. He deliberately avoided fear, anger and envy, which are the triple impediments to rise to eminence. Into the portals of this High Court he came; he saw, and he conquered. He is no more with us. Let us all pray in silence for a few minutes in honour of the departed soul.

UNIVERSITY COLLEGE OF LAW LIBRARY

REFERENCE MADE BY THE ADVOCATE-GENERAL ON 9TH OCTOBER, 1979. TOUCHING THE DEMISE OF LOK NAYAK J. P. NARAYAN.

My Lord the Chief Justice and your Lordships,

The Lok Nayak is no more. JPN, another illustrious son of India, shuffled off his mortal coils early yesterday morning at Patna. He is gone above to that mansion of the immortals wherefrom he cannot guide us any more and wherefrom I sincerely hope he does not see us any more.

I refrain from a repetitive recital of his biodata; the newspapers and the audio-visual media are replete with them.

The Lok Nayak was Libran and the peculiar features of the Zodiacal sign were evident in his character. An impassioned pursuit of justice, an extraordinary sympathy for the other point of view, and an amicable charmness of manner. The call of Mahatma Gandhi prevailed over sheer self-interest and he plunged headlong into the freedom movement. He was among the foremost freedom fighters under the Mahatma and stopped at nothing in his mission of releasing his country from the yoke of British Raj. Incarceration held no terrors for him. Imperial *zulum* he accepted with a smile. He took a trip to the U.S. where he completed his academic career and the imprint of this sophistication can be seen in his thoughts and words.

On his return to India in 1932 JP formed a flank of his own, with its own plank with an accent on Socialism. Marx had made a mark in J.P., as he did on every young intellectual. Symbolically enough, though he wore a khaddar Gandhi cap it was red in colour. He became the acknowledged leader of the *then* younger section of the Congress movement, which was the harbinger of the Socialist movement in the country.

Came freedom. For one who had spared no pains, who had shed his blood, sweat and tears for the cause, who had sacrificed what may have been a spectacular personal career, the leaves and fishes of office were there for the taking. Had he so wished he could have walked into the Nehru Cabinet. But J.P. was not a man to compromise with his conscience. The glitter, glamour and glory of office meant nothing to him. He continued to plough his Socialist furrow. Like Caesar, he rejected the crown of Office more than once. He did not fight for a Deputy Prime Ministership. He abjured it when offered on a platter by Panditji.

From Socialism to Sarvodaya was in his case, an almost natural progression. Very like the transition from a larvae to a chrysallis or pupa. The biological analogy is apt, for J.P.'s further transformation was yet to come, when from pupa he emerged into a dazzling, radiant butterfly in his closing years, to illuminate the darkness of degeneration in public life.

Though never in office, J. P. had the interests of the country constantly in mind and like Rajaji, had the courage of his conviction to say what he felt. Again like Rajaji, J. P. never hesitated to differ from the official party line. Frankness is not relished particularly by those in position or power and more particularly so, when they are in the wrong; criticism is resented; suggestions are suspect; advice is construed as adverseness. This is an unpleasant fact of life. He rose like a Phoenix from its ashes, from self-imposed doldrums to repair what he felt had gone wrong with the body politic. Bandhs followed. They were not as non-violent as he would have liked.

Emergency was clamped down on the nation. We are all too contemporary to those events of that period to be able to judge them objectively or even to assess the justification or otherwise for the many things that were done then. That is left to history and posterity.

None can gainsay the titanic and colossal role which J. P., by then a very sick man, undertook and fulfilled in that grave situation. He canalised and galvanised the smitten and shattered ranks of the opposition, to fight a memorable election and win it to down the ruling Congress Party's banner for the first time since freedom. Again, if I may say so a realisation of Rajaji's ambition. J. P.'s undoubted contribution to the restora-

tion of the democratic process will ever be recorded in golden letters in the chronicles of our times. The *sine qua non* of democracy is the *existence* of two or more parties which could claim the confidence of the people. J. P. at one time did not accept this but the events of the mid-Seventies changed his mind. I am neither here nor elsewhere or ever concerned with the policies or pursuits of any particular political party. J. P.'s monumental work lies in reviving the *possibility* of the people's free choice. Trial and error in the choice of one's rulers is the birthright of the people. J. P. gave it back to them.

Did J. P. die a happy man? No great man can really die a happy man. For great men are idealists, are visionaries. They conceive but they cannot themselves execute. For this they necessarily depend on lesser men, who more often than not, fail them. Gandhiji dreamt of an India where the foul head of communalism could not raise its head. Three decades after he fell to the bullet of an assassin, we are still in the lurch. Or perhaps have we ever been skidded? Mahatmaji's murderer's name was, we hear, recently mentioned with adulation by an elected member of Legislature up North. Martin Luther King dreamt of the day when the blacks and the whites could walk upright and together equally. The U. S. Supreme Court is still sorting out the problems created by race discrimination howsoever covert. J. P.'s idalistic visions of India as it should be, his notions of purity in public life, his desire for a united opposition party to offer an effective alternative and stable Government; his dream of a total revolution; his hopes of a casteless society; his fantasies of eradication of poverty; these remain far far away. I should say, they are not even visible on the horizon. We can only pray that we may in future years be steered nearer these goals set by J. P., than be set in some sort of retrograde motion that will move us further away from them.

Dialysis is the process by which impurities in the system are eliminated. Dialysis saved J. P. for the nation for over three years. Is there any dialysis by which the nation can survive J. P., to realise his Utopia. If there is we should find it, here and now.

To conclude, is J. P. really dead? What is death? To go out like a light, and in a sweet trance to forget oneself, and all the passing phenomena of the day as we forget the phantoms of a pleasing dream, to form as in a dream, new connections with God's work; to enter into a more exalted sphere and to take a new step up man's graduated ascent of creation.

My Lords, the Lok Nayak was neither a member of the Bar, nor a person who held high constitutional office. But as a declared national leader, his was a severe loss to the nation which I felt it my duty to inform you in Open Court by an Official reference.

REPLYING TO THE ADVOCATE-GENERAL, THE HONOURABLE THE CHIEF JUSTICE OF TAMIL NADU SAID:

Mr. Advocate-General, my dear colleagues dear members of the Bar:

Myself and my colleagues join with you and in your very honourable and appealing sentiments which you have expressed revolving round that great National leader. We join with you and express similar sentiments of profound regret on the loss of one of the distinguished leaders of our country Lok Nayak Jai Prakash Narain. He was a Gandhian by birth, adoption and practice and has proved by word, thought and deed that he was a second Mahatma. Throughout his life as an active leader, he discharged heavy and onerous responsibilities as a sentinel on the que vive. We usually expatiate 'J. P.' as Justice of the Peace, but I would add that he was a Justice Profulgent, since he radiated truth and tranquillity throughout his life.

His ideologies caught the awakening of every Indian, his timely clarion call on all the members and subjects of national importance, in times of need, was obeyed by everyone as a mandate. His approach on every problem concerning the welfare of the State was unique by itself. He is no more with us to be our true friend, sagacious philosopher and a timely guide. This national loss which has created a bridge, cannot easily be built upon. God's ways are inscrutable and at a time when we need him, he has been snatched away. As a nation and all of us in particular are destined in this hour of mourning to bear the loss of Lok Nayak, Jai Prakash, with fortitude. May his soul rest in Peace.

A NOTE ON LAKSHMI AMMAL *v.* THE SPECIAL TAHSILDAR (L.A.), ETC., (1979) 2 M.L.J. 26.

By

T. R. VENKATARAMANAN, B.COM., B.L., D.P.P.A., *Advocate, Tenkasi.*

This was a suit by the appellant to claim a certain money from the respondent, deposited as compensation in land acquisition proceedings. The properties acquired, were originally the properties of the "worldly-wise-man" (as he was termed by Justice Mohan) late Ponnambala Mudaliar. He, in his will dated 18th October, 1918, made the following dispositions. First a life interest to his second wife Sundarammal without any power of alienation, then to her grand-daughter Lakshmi Ammal and to her husband Jayarama Mudaliar.

The exact words are reproduced here

> "சௌபாக்கியவதி லஷ்மி அம்மாளும் அவள் புருஷன் ஜெயராமமுதலியாரும் சர்வ சுதந்திரத்தோடு புத்திர பௌத்திர பாரம் பரியமாய் ஆண்டு அனுபவித்துக் கொள்ள வேண்டியது.

There were 3 riders in the will namely:

(1) that in the event of Jayaraman marrying a second wife without the consent of his first wife namely Lakshmi Ammal, he will forfeit his right to the property;

(2) the said couple should not encumber the properties till the said Lakshmi gets an issue (*santhathi*); and

(3) the *santhathi* should get the property absolutely.

The old man in his wordly wisdom had foreseen another eventuality too (*i.e.*) if the said Lakshmi dies in between (மத்தியில்) without issue, the properties should revert

equally to her father V. Ganapathi Mudaliar as one set and to the two brothers of the testator as another set.

As the testator feared, Jayaram married a second wife and forfeited his claim and it was confirmed in O.S.A. No. 27 of 1939 (as reported in the judgment under review).

Lakshmi was enjoying the property and the big leviathen intervened and compulsorily acquired the properties and deposited about Rs. 67,815.30 (including Rs. 10,181.90 as interest) in Court. Then started the litigation as to whom the deposit would belong. It was wrongly contended on behalf of Lakshmi that she got an absolute interest under the will dated 18th October, 1918. The Subordinate Judge and the High Court negatived the contention, rightly saying that merely because the will reads "*சர்வ சுதந்திரம்*" at one part, she cannot erase the other portions of the will where only a life estate was specifically vested in her. Justice Mohan has once again affirmed the well-settled legal principle that a document should be read as a whole and not piece-meal.

The readers may now raise their eye-brows as to why I should write an article if I agree with the Judgment.

To parody Shakespeare, "I have not come here to bury Ceasar (to amend, Lakshmi) but to praise him (her)". She might still knock off her grand-father's properties by adopting either or both of the following two arguments and by saying that I hope that I will not be branded as one who instigates litigation, for my aim is only to create a healthy discussion on the topic even though it is bound to have some side effect.

Under section 14 (1) of the Hindu Succession Act (XXX of 1956) which reads "Any property possessed by a female Hindu whether acquired before or after the commencement of this Act shall be held by her as full owner thereof and not as a limited owner" Lakshmi might have claimed full ownership. Under section 14 (1) in *Badri Pershad* v. *Smt. Kanso Devi*[1], it has been finally held that section 14 (1) will apply to case where the woman has a pre-existing right of maintenance. Normally grand-daughters have no right of maintenance (Mulla, Hindu Law, page 593, Edition 1974). But the same book cites a Calcutta High Court ruling wherein a grand-daughter is held entitled to maintenance as "deena samasrita" (poor dependants). Lakshmi can as she is "possessed" of the properties as a life-interest holder on the date of Act XXX of 1956 (17th June, 1956) invoke section 14 (1), being deserted by husband.

The second and more important argument in favour of Lakshmi for the property is in Act LXXVIII of 1956. The will of 1918 gives property to Lakshmi's heirs. Under section 8 of the Hindu Adoptions and Maintenance Act (LXXVIII of 1956) she has a right (subject to the conditions therein) to adopt a child for her and in her own standing. If she does so the property will go to the adopted son or daughter and not to anybody else. So the question of reversioners claiming the money during Lakshmi's life-time, is premature.

1. (1970) 1 S.C.J. 114 : (1970) 2 S.C.R. 95 : A.I.R. 1970 S.C. 1963.

OUR NEW CHIEF JUSTICE.

Justice Ismail has been appointed Chief Justice of our High Court with effect from 6th November, 1979 in succession to Ramaprasada Rao, CJ. This is as it should be. In Justice Ismail's choice for the post, considerations of seniority and merit fully concur. A distinguished academic career was followed in his case by a rapid rise at the Bar with extensive practice in all branches of law and rich experience in Appellate as well as Original Side work. After serving as part-time Lecturer at the Madras Law College from 1951 to 1959 and as Additional Government Pleader during 1959 to 1962 he accepted appointment as a Judge of the Delhi High Court in February, 1967 wherefrom he was transferred to the Madras High Court in November of that year. Thus Justice Ismail has been a puisne Judge for over twelve years and won a name as a truly learned and talented Judge. It is often said that the first and foremost qualification of a Judge is the possession of a very sharp and exacting conscience enabling him to render justice uninhibited by any fear except of that which is wrong, which is not deflected by any affection or ill-will. That quality Justice Ismail possesses in abundance. His judgments are marked by thoroughness and meticulous probe into the core facts and points of law arising for decision. Possessing a sound and deep knowledge of the basic principles in the different branches of the law, he has been equally at home in whatever type of case he had to deal with. Quick to get at the core of a case himself, the inexperienced members of the Bar may often find a difficult to keep pace with the Judge's thoughts.

A facile and very fluent speaker both in English and Tamil from his college days, he can easily hold the attention of any audience he is addressing by his easy flow of words and fine erudition. Justice Ismail is well-known both here and abroad as a fine Tamil scholar with genuine interest in the Tamil religious classics. His discourses on Kamba Ramayanam and his contributions to the Tamil Journals reveal a highly analytical and broad-minded approach and catholicity of outlook. Another notable quality of Justice Ismail is his reverence for his Law Lecturers in the past, reflected in a striking tribute paid to them in (1974) 1 M.L.J. 475 at page 479, concluding with the observation: "Their exemplary conduct and character, earnestness and quiet efficiency born out of the possession of the necessary equipment in abundance, enabled them to handle classes of hundreds of students without a hitch or ruffle. They were men and masters of superb and superlative mettle and calibre. Their very presence on the dais inspired in the students a sense of awe and respect and created an infectious and irresistible interest in and thirst for knowledge and enlightenment".

Justice Ismail's tenure as Chief Justice will run till February, 1983. We are sure that during his regime the prestige and the traditions of his office will be fully maintained. We convey to him our hearty felicitations and good wishes.

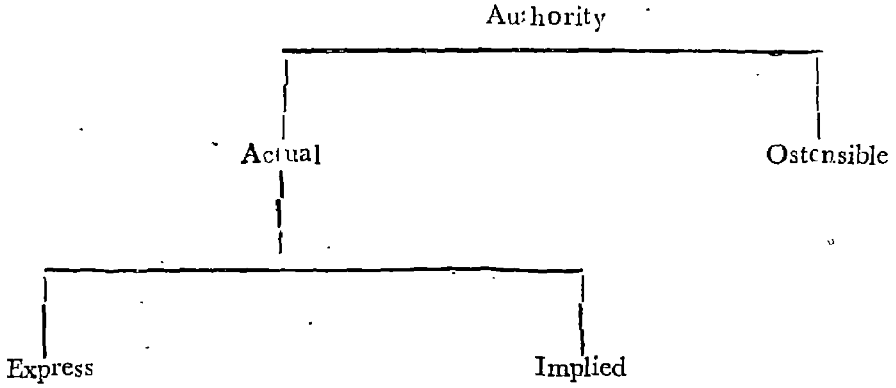
"IMPLIED AND OSTENSIBLE AUTHORITIES OF PARTNERS:"

By

M. R. Sreenivasan, M.A., M.L., *Assistant Professor (Mercantile Law), D. G. V. College, Madras-29.*

More ofen than not the implied authority of a partner is mistaken to be the ostensible or apparent authority. While it is true that the machinery of partnership is nothing but a beautiful projection of principal-agency relationship it must be clearly understood that the scope of the authority of a partner is the scope of his power. In other words whatever power is given in the partnership agreement authorising the partner to exercise, those powers alone could be enforced. Briefly the authority of the partner flows from the power conferred on him by the deed and/or by virtue of his position as partner in the firm.

For the purpose of clear understanding of the authority of the partner as envisaged under sections 19 (1), 19 (2) of the Partnership Act (IX of 1932), let us know the classification of the authorities of the partner.



Authorities of the partners may be classified as actual and ostensible.

Actual or factual authority may be given expressly *i.e.*, in writing under the agreement, whereas implied authority need not be in writing under the agreement. Implied authority automatically flows out of the position a person occupies as a partner. A partner by virtue of his being one in a trading firm has got the following powers of implied authority: (*a*) To borrow money on the credit of the firm; (*b*) drawing, accepting, endorsing bills and other negotiable instruments in the name of the firm; (*c*) pledging any goods of the firm for the purpose of borrowing money and (*d*) employing a solicitor to defend an action against the firm for goods supplied. In other words for exercising the powers enumerated above a partner need not obtain the consent from his co-partner. It must be understood clearly that where the business is not of a commercial nature and does not involve selling or buying of goods a partner will have no authority to borrow, pledge or to make or issue negotiable instruments though he may sign cheques. When a partner is prohibited from doing an act which would otherwise be within the scope of his implied authority it is said that the implied authority of the partner has been restricted.

The implied authorities of a partner mentioned above can be extended or restricted by contract *inter se* between the partners. That is what precisely section 20 says: "the partners in a firm may by contract between the partners extend or restrict the implied authority of any partner". The second part of section 20 reads:

"Notwithstanding any such restriction any act done by a partner on behalf of the firm which falls within his implied authority binds the firm, unless the person with whom he is dealing knows of the restriction or does not

know or believe that partner to be a partner."

The meaning of section 20 alone gives us the clue for distinguishing implied authority of a partner from that of ostensible authority. The guiding principle of the Act is to leave as much freedom as possible *inter se* between partners in authorising them to enter into such agreement by enabling them either to extend their implied authorities or restrict such implied authorities. With a view, to ensure that third parties do not suffer, the second part of section 20 lays down, that so long as such third parties are not aware of the restriction under the agreement *inter se* between partners the firm would be ever liable. On the other hand if the third parties are: (1) well aware of the restriction contained in the agreement, or (2) the third party does not know the partner as partner, or (3) believe the partner to be a partner no question of binding the firm can arise, because the partner has been dealt with in his personal capacity only.

From a perusal of section 20 it is clear that ostensible or apparent authority means that any authority which the third parties (unknowing of the restriction under the partnership agreement) are entitled to presume and assume to be exercised by a partner as such. That is why it has been rightly said that implied authority of a partner is binding not only on the third parties and the firm but also on the individual partner and the firm. Any authority which is incidentally and consequentially flowing from the position a person occupies in discharging his duties within the scope of his office is implied. Therefore definitely it would be binding on all. For example when I give you authority to take a cup of coffee it goes without saying that you have to make use of your lips to drink that cup of coffee.

But ostensible or apparent authority is binding on the Firm and third parties and it is not binding on the individual partner's act and the Firm. The Firm can always take the individual partner to task in so far as the excess power exercised by him. It is pertinent to cite the case of *Watteau* v. *Fenwick*[1], in this regard. In that case:

The defendants had forbidden the manager of their hotel from buying cigars on credit. The plaintiff gave cigars on credit to the manager which were used in business. The manager's name appeared over the board and the plaintiff trusted him and had never heard of the defendants. Being unable to recover the price from the manager the plaintiff sued the defendants Wills, J., held that "once it is established that the defendant was the real Principal, the ordinary doctrine as to Principal and Agent applied that the Principal is liable for all the acts of the agent which are within the authority usually confided to an agent of that character, notwithstanding limitations as between the Principal and the Agent put upon that authority.

Similarly in *Valapad Co-operative Stores Ltd.* v. *Sreenivasa Iyer*[2], it was held that a person having responsibility to carry on the business of the store of a Co-operative Society must be deemed to have authority to purchase goods on credit notwithstanding that the society had advanced him enough money for the purpose.

The distinction between implied and ostensible authority has been well amplified by Smith and Watts in their book on "Mercantile Law" Page 177 (8th Edition 1924). They say that "Implied authority is a real authority the exercise of which is binding not only as between the principal and the third party but also between the principal and the agent. It differs only from express authority in that it is conferred by no express words but is to be gathered from surrounding circumstances. The term ostensible authority on the other hand denotes no authority at all. It is a phrase conveniently used to describe the position which arises when one person has clothed another, or allowed him to assume an appearance of authority to act on his behalf without actually giving him any authority either express or implied by which appearance of authority a third party is restricted in believing that real authority exists". Hence what is applicable to Principal-Agency relationship should be applied with

1. (1893) 1 Q.B. 346.

2. A.I.R. 1964 Ker. 176.

equal force to partnership relationship for partnership is based on Principal-Agency relationship.

Now coming to restrictions as such there should not be even a slight doubt between restrictions arising under the agreement and restrictions arising under the statute in the Partnership Act with reference to sections 20, 21, 19 (1) and 19 (2). We have already seen that with regard to implied authorities of the nature enumerated above restrictions can be imposed under the partnership agreement. As regards restrictions imposed under statute contemplated under section 19 (2) of the Partnership Act, it is definitely not binding upon the firm whether third parties had no knowledge or knowledge about these statutory restrictions.

Although the implied authorities of a partner may be restricted or extended under agreement as per sections 20 and 22 the authorities specifically enumerated under section 19 (2) can never be exercised by a single partner without the consent from the co-partners. Section 19 (2) does not empower a single partner: (*a*) to submit a dispute relating to the business of the firm to arbitration; (*b*) open a banking account; (*c*) compromise or relinquish any claim; (*d*) withdraw suits; (*e*) admit any liability; (*f*) acquire immovable property; (*g*) transfer immovable property.

It is obvious from a reading of section 19 (2) that there cannot be a contract contrary to section 19 (2).

In other words partners cannot give a go by to section 19 (2) and enter into a contract thereby giving authority to exercise those powers that are restricted under section 19 (2) of the Act. The section 19 (2) reads: "In the absence of any usage or custom of trade to the contrary", which means not a contract to the contrary. Had the intention of the Parliament been to include a contract then the section would have been worded, "In the absence of contract to the contrary". Therefore there cannot be a contract contrary to section 19 (2). Supposing third parties presume that a partner has authority contravening section 19 (2) such authority will not be binding on the firm. Therefore the third parties have their remedies only against such partner who has usurped such power not allowed to be exercised by him without the consent of the other co-partners. Hence even a sale deed signed by a single partner for and on behalf of the firm does not convery to the buyer good title unless the other partners are made *eo nomine* parties to the deed.

The recent decision in *S. N. Soni* v. *Taufiq Farooki*[3], says that partners can relax the restrictions under section 19 (2).

The above decision does not however permit a contract contrary to section 19 (2). It only emphasises that in case any partner has contravened, exercising the power it is unlawful, but at the same time it could be legitimised by ratification by the other co-partners.

Inasmuch as partnership hinges on the doctrine of Principal-Agency relationship, it is always open to the principal to ratify the act of an agent though such power has been exercised in excess of the authority given to him.

---

3. A.I.R. 1976 Delhi 63.

BOOKS REVIEW

I. MARRIAGE AND MATRIMONIAL REMEDIES, by *Mohammed A. Qureshi*, 1978. (Published by Concept Publishing Company, Delhi-110035.) Price Rs. 110.

The marriage laws of India present a complicated and incoherent picture, being a curious mixture of the old and the new, of the archaic and the modern. The ancient concept of Hindu marriage as a sacred and religious tie has been brought under the Parliamentary axe; but the concept of Muslim marriage as a contract instead of serving as a catalysis for reforms in tune with modern conditions in regard to its incidents has kept Parliament at bay for fear of wounding Muslim religious sentiments. While the Hindu Marriage Act, has adopted the neo-modern concept of divorce by mutual consent, Muslim law continues to retain the archaic institution of talak-ul-bidat which, according to the author, is "a mockery of Islam" and is a concept of the absolute discretion of the husband to divorce his wife without any formality. The peculiar multi-communal set up in India has been responsible for marriage and its incidents being governed by different community laws, and in the view of many leaders of thought, the relatively backward position of Muslim women socially and economically is due to the perpetuation of their personal law of marriage and divorce which have become outmoded. Article 44 of the Constitution advocates the enactment of a Uniform Civil Code applicable to all Indians as a step towards achieving national integration. In the instant book the author makes a clarion call for such a Code on the basis of his evaluation of the form, content, nature and potential of the marriage and matrimonial reliefs under the different laws in India. As a result of his comparative study of the subject the author feels that there already exists a large common area where Hindu and Muslim laws intermingle facilitating enactment of a Uniform Civil Code. The author opines that the Special Marriage Act, is a liberal and progressive piece of legislation and may well provide the basis for the future of the Uniform Civil Code (see page 4, fn. 10). He also thinks that it would be better if the concepts of marriage break-down were introduced in India with a provision for reconciliation (page 343).

A tendency of the author is to make at some places categoric statements, but at other places to qualify them. In the preface it is claimed "Muslim law prohibited bigamy and advocated monogamy". At page 55 it is stated that though polygamy is permitted it is not a mandatory provision. "It is not like namz that must be performed". Again while at page 20 it is observed "If we want a Uniform Civil Code the demand should come from the minority communities", at page 296 it is stated: "In the interest of the society our Parliament should come forward and introduce a Uniform Civil Code which will be applicable to all citizens". Likewise at page 6, line 7, it is said "A single Indian or Uniform Civil Code applicable to every citizen of India irrespective of caste, creed, sect or religion would remove the differences thereby building up a single nation with a uniform set of laws"; lower down (line 22), it is remarked "Though a Uniform Civil Code will not wholly bring about desired results, it will definitely help in maintaining national integration to a large extent".

In passing, it may be noted that in relation to the age of marriage for Hindus mentioned as 18 and 15 for boys and girls under the Hindu Marriage Act (see page 57), the same has been raised to 21 and 18 respectively by the Child Marriage Restraint (Amendment) Act (II of 1978).

The instant book constitutes a valuable sociological document. It has brought together a mass of materials and subjected them to analytical study on the religious and social aspects of marriage. The author's conclusions are the result of cogent reasoning and provoke thought. The book is a welcome publication.

II. COMMENTARY ON THE HINDU SUCCESSION ACT. by *Rameshwar Dial* and *Adarsh B. Dial,* Third Edition, 1979. (Published by Anand Law House, Delhi-110 006). Price Rs. 60.

Succession may be testamentary or intestate. Testamentary succession among Hindus is governed by the Indian Succession Act. Intestate succession in relation to the undivided interest of a deceased in Mitakshara joint family property is controlled by the Hindu joint family law under which such interest passes by survivorship. In all other cases of intestacy the provisions of the Hindu Succession Act apply. The Act has not been subjected to any important amendment since its enactment in 1950 unlike in the case of the Hindu Marriage Act. Not that the drafting of the Act was free from defects. If any, clumsy drafting had given rise to a number of problems which, however have been resolved by a series of Supreme Court decisions leaving the law fairly settled.

The book under notice has provided commentaries under each section referring to the back-ground material and judicial decisions. Case-law up-to-date has been taken into account though some decisions may not have come in for mention, as for instance, *Dadoo* v. *Raghunath,* 1978 Mah.L.J. 739, holding that illegitimate children cannot invoke in their favour section 8 in respect of a male Hindu dying intestate. At page 32, it is stated that pure Hindu law did not deal with the rights of illegitimate children at all. So stated as an absolute enunciation it is not warranted. Manu and Yajnavalkya have specifically referred to heirship of the illegitimate son to the putative father among Sudras and Madhatihi describes the illegitimate son as being verily a son. Since nearly fifteen years had passed from the publication of the previous edition, the revision of the entire text of the book had become inevitable, and this task the authors have satisfactorily carried out. The readers will find the book helpful.

III. PARTITION ACT, by *Hari Gopal Basu,* Third Edition, 1979. (Published by Law Publishers, Allahabad-211 001). Price Rs. 25.

Though joint ownership as found in the joint family is being gradually eroded and its denigration is proceeding apace giving place to an egocentric society based on personal efforts, nevertheless joint effort is still needed, may be in a different shape for purposes like organising an industry or commercial organisation joint family institution being still lingering albeit in an attenuated form and joint effort being still needed for a number of purposes. Even now the law relating to partition continues to be relevant; one of the modes of getting a partition effected is by the Court in a suit commenced by a party for the purpose. The Partition Act IV of 1893—a short Act with 10 sections—has three objects: (1) to give the Court a discretionary authority to direct a sale where a division cannot reasonably be made and a sale would in its opinion be more beneficial for the purpose, (2) to give such of the shareholders as are not for sale the right to buy out the others at a valuation to be determined by the Court, and (3) to empower the Court to compel a stranger who has acquired by purchase a share in a family dwelling house and seeks partition to sell his share to the members of the family owning the rest of the house at a valuation to be determined by the Court.

The instant book provides a lucid and succinct commentary on the Act. Decisions rendered under the Act up to date have been taken into account. Five appendices dealing respectively with (A) Powers of Courts in England and America, (B) Statement of Objects and Reasons, (C) Practice and Procedure in Partition Suits, (D) Partition under Hindu Law, and (E) Partition Forms under Hindu Law enhance the usefulness of the commentary. The book should meet in every way the requirements of the lawyers and law students.

IV. THE LAW OF SUCCESSION CERTIFICATE, by *R. L. Anand,* Third Edition, 1979. (Published by Law Publishers, Allahabad-211001). Price Rs. 35.

Inasmuch as the settling of rightful claimants to the estate of a deceased person under the various systems of law may entail elaborate inquiry in a regular civil suit and in the meanwhile claims based on debts due to the deceased's estate may become barred by limitation, the law provides for the obtaining of a succession certificate facilitating the collection of debts, apart from questions of title often involving intricate questions of law. Succession certificate is a certificate granted by a competent Court to collect the debts and securities of the deceased, as also to receive interest or dividends and to negotiate or transfer securities. Payment to the holder of the certificate relieves the debtor from liability to any person subsequently declared to be the rightful claimant. Succession certificates are granted under the provisions of Part X of the Succession Act, 1925.

The book under review has dealt with the law of succession certificate in 11 Chapters. Chapter I is Introductory. The other chapters run under captions respectively—Representative Title; Proof of Representative Title; Jurisdiction; Security; Forms, Extension etc. of Bond; Operation and Effect of Certificate; Revocation of Certificate, Appeals; and Miscellaneous. There are 4 Appendices giving extracts from (A) Administrator-General's Act, (B) Sections 289, 290 of Act XXXIX of 1925 and Forms of Probate and of Letters of Administration, (C) Sections 8 and 30 of the Hindu Succession Act of 1956 and the Schedule thereto, and (D) Court-Fees Act, VIII of 1870, sections 19-A to 19-K and Schedule items 11, 12 and 12-A. The exposition of the law is analytical examining the statutory provisions and case-law critically. At page 113 under para. 54, the decision in *Bhaiyaji's case,* 1978 All. 268, holding that section 214 of the Succession Act only debars a Court from passing a decree where succession certificate is not produced but does not preclude the filing itself of the suit could also have been noticed. The book should prove a dependable guide to legal practitioners as well as Courts.

V. CRIMINAL LAWS MANUAL, by *P. P. Bhanage* in 2 volumes. Second Edition, 1979. (Published by C. Jamnadas & Co., Bombay-400002). Price Vol. I, Rs. 32 and Vol. II, Rs. 40.

The first volume of the book under notice incorporates 22 Bombay and Maharashtra Acts and Rules and the second volume contains 20 Central Acts and Rules. The object of the publication is to provide busy lawyers and police officers with all that they need in their daily working in criminal matters. The Acts chosen for inclusion are mostly the minor Acts. The Penal Code, the Evidence Act and the Criminal Procedure Code forming the core of criminal law are left out of these volumes. In Volume I are included Acts such as the Bombay Police Act, 1951; the Maharashtra Village Police Act, 1967; the Bombay Public Conveyances Act, 1920; the Bombay Prevention of Gambling Act, 1887; the Bombay Money-lenders Act, 1946; the Bombay Children Act, 1948; the Bombay Borstal Schools Act, 1929; the Bombay Opium Smoking Act, 1936; the Bombay Prevention of Begging Act, 1959; the Bombay Drugs (Control) Act, 1959; the Bombay Habitual Offenders Act, 1959; the Maharashtra Government Servants Inquiries (Evidence of Corruption) Act, 1965 and the Maharashtra Animal Preservation Act, 1976. Volume II sets out the texts of Central Acts such as the Arms Act, 1959; the Cattle Trespass Act, 1871; the Prevention of Cruelty to Animals Act, 1969; the Prevention of Corruption Act, 1947; the Probation of Offenders Act, 1958; the Dangerous Drugs Act, 1930; the Indian Explosives Act, 1884; the Explosive Substances Act, 1908; the Protection of Civil Rights Act, 1955; the Child Marriage Restraint Act, 1929; the Wildlife (Protection) Act, 1972; the Indian Railways Act, 1890; the Railway Property (Unlawful Possession) Act, 1966; the Railway Protection Force Act, 1957; the Motor Vehicles Act, 1939; the Indian Lunacy Act, 1912 (Extracts); the Indian Forest Act, 1927; the Suppression of Immoral Traffic in Women and Girls Act, 1956; and the Motor Vehicles (Amendment) Act, 1978. Opinions may differ as to the inclusion of a particular enactment or its non-inclusions but it is easy to realise that every one of the Acts included

in the two volumes has a large social purpose behind it or at any rate touches rampant social evils in our every-day life. Having been a Law Instructor in a Police Training College the author has selected the above enactments in the light of his experience. The texts have incorporated amendments up to date. The author has also provided brief comments on the sections supported by references to case-law. The two volumes will be found useful by lawyers and police officers.

VI. ADMINISTRATION OF JUSTICE IN INDIA, by *T. K. Mann,* 1979. (Published by Concept Publishing Company, New Delhi-110 015). Price Rs. 60.

The book contains a study of the administration of Justice in Punjab from Ranjit Singh's regime to the present time. Essentially however the present system of administration is what the Britishers left. The British treated Punjab, to start with as a non-regulating province and administration of justice was personalised. In courst of time, the province was brought into line with the rest of India. The author rightly points out that though the process of bringing uniformity in the administration of justice was set in by the codification initiated by the Law Commissioners which reached its climax by the enactment of the Penal Code, the Civil and Criminal Procedure Codes and the Evidence Act, yet the history of the assimilation of the non-regulating provinces shows that it depended on the criteria of administrative convenience as visualised by the Britishers rather than on the desire to do justice to the people of the country. The system of justice as introduced by the British is beset by complicated procedures by a rigid adherence to precedents leaving little scope for pragmatism, by its philosophy that "hundred offenders may escape but even one innocent may not be punished" and by the system being too much bureaucratised. The author discusses administration of justice dividing it into civil justice and criminal justice and touches upon other aspects relating to the judiciary such as Administrative Functions, Separation of Judiciary from the Executive, Bench and the Bar and Ministerial service. The author draws attention to the defects of the system and suggests remedies and reforms to eliminate the defects following the lines already familiar to the public. In the author's view the trials of the Akalis in the non-violent movement of Gurudwara reforms and trials of revolutionaries like Bhagat Singh, Sukhdev, and Gurudutt clearly show that the judiciary had been an engine of oppression rather than an instrument for the administration of justice during the entire period of British rule in this part of the country." (page 172). The author also feels that the appointment of Justice Ray as Chief Justice of India and of Justice Narula as Chief Justice of the Punjab and Haryana High Court superseding senior Judges were justified (page 175).

The book under review makes interesting reading.

VII. A JUDGE'S MISCELLANY (SECOND SERIES), by *M. Hidayatullah,* 1979. (Published by N. M. Tripathi Private Limited, Bombay). Price Rs. 50.

This is the second of a series published under the caption "A Judge's Miscellany". It includes lectures delivered by the author on "The Constitution, the Parliament and the Court", India—Centre and States Relations, Law and Lawyers, The Constitution and the Legislative Process as well as speeches on topics like Universalities of Religion, Religion, Morality and Law, and some literary pieces—monographs—on Chancer, Blake and Donne. There are in all seventeen items.

In the lecture on the Constitution, the Parliament and the Court, the author examines the rôle of the Supreme Court and Parliament and concludes. "Parliament has now increased its competence to the level of the British Parliament, whenever it chooses to amend the Constitution" (page 14). According to the author it was a mistake to shelter property right as a fundamental right, and it should be given protection of a different kind as has been done in Part XIII in regard to Trade, Commerce and Intercourse within the Territory of India (page 18). In his lecture on India—The Centre and State Relations, the author gives expression to his feeling how the cry for State autonomy

and inter-State rivalry portend a disruption of the country's unity and how national unity makes an appearance only where there is a national emergency and the euphoria soon passes (page 25). The author's view that "we should have made a unitary constitution. But the die is cast and it is no use yearning for a unitary State with administrative unity. We must make the best of what we have". (page 34) is bound to be shared by many. In the lecture on Law and Lawyers, the author points out that the Constitution does not admit of retrospective amendments at all except to correct an apparent slip (page 56). In his address on Constitution and Legislative Process, the author explains how a Judge is also a human being and not a machine, how he enjoys in addition to his legal training values acquired in an individual manner arising from his social experiences within the culture in which he has lived which in turn give rise to "attitudinal variables", and how the attitudinal behaviour of different Judges leads to their being divided as liberal or conservative. The author recognises that in India today it may be said that the majority of Judges will favour the Directive Principles as against Fundamental Rights and sociological changes will be upheld (page 85). In his speech on Religion—Morality—Law, the author observes that in regard to making changes in Muslim law the attempt is by no means foreclosed but the real question is how far one can go and by what slow, indirect and least offensive modes, the necessary reforms can be achieved (page 143). Each speech and monograph represents profound study and clear thinking, packed with information, brilliantly analysed and neatly presented. To study the book is itself an education.

VIII. Declaratory Judgments, by *V. G. Ramachandran* and *V. R. R. Gopalan*, 1979. (Published by N. M. Tripathi Private Limited, Bombay). Price Rs. 55.

Much attention has not been paid in the past in this country to the subject of Declaratory Judgments. Such judgments form one mode of protecting the rights and liberties of citizens. In the words of Lord Denning in the *Pyx Granite Co. case*, (1958) 1 Q.B. 554 at 571, "if a substantial question exists which one person has a real interest to raise and the other to oppose, then the Court has a discretion to resolve it by a declaration, which it will exercise if there is good reason for so doing." The declaratory remedy is available to an aggrieved person on the original side of the lowest to the highest Courts in this country by way of suits under the Civil Procedure Code or the Specific Relief Act. The declaration may be either in the affirmative, that the plaintiff has got a right, power etc., which he claims or in the negative that the defendant has no such right or claim. A declaration may also be granted in lieu of injunction where, in the circumstances of a case, the Court feels it inappropriate to grant a coercive decree. Declaratory relief can be rendered also under Article 226 of the Constitution.

In the Preface the authors observe: "It is forgotten that writ proceedings are more costly and very time-consuming as to disposal than an original suit". "A suit is comprehensive, permits evidence to be recorded while the writ is too discretionary, perfunctory and disposed on affidavits". The authors feel that it would be more purposeful for an aggrieved person to resort to the remedy by way of a declaratory suit. There is much to be said for this view but it loses much of its force when it is remembered that ordinarily for a litigation instituted in the lowest Court to traverse through the appellate Courts and achieve final result much more time and money will have to be consumed than in the case of a writ filed in the High Court. The book is divided into 8 chapters. Chapter II is an introductory chapter dealing with the nature and scope of a declaratory action. Chapter II under the caption 'Declaratory action where excluded in India' deals with the areas within which Courts can function regarding declaratory actions and the limits set thereto. The Court's jurisdiction is often specifically ousted by statutory provisions particularly in the case of fiscal laws and tax matters, the finality clauses in labour laws etc. Chapter III provides an interesting comparative survey of the Historical Aspect of Declaratory Action. Chapter IV touches an Indian law as to Declara-

tory Action. The Indian statutory provisions as to Declaration are reviewed in Chapter V and the impact of the provisions on Domestic Tribunals like the Universities, the Bar Council of a State, the Medical Council has been carefully considered. Chapter VI is devoted to the New Jurisdiction of the High Courts and the Supreme Court under the Constitution 42nd Amendment Act. This Amending Act has now been further amended and in view of it not all the comments made by the authors will be useful now. Declaration as a Method of Judicial Control is considered in Chapter VII and Chapter VIII sets out the Concluding Reflections of the Autors.

The authors have brought together a mass of information from the works of eminent jurists and standard treatises. The leading cases have been commented upon with precision and clarity. Statements like. "The emergence of the Janata Party was indeed a divine deliverance from Indian despotism of the dark emergency era" [Preface p. X] were not necessary and could have been avoided. The authors have done a great service to the legal profession by writing this book, which will be highly useful to the members of the Bar and the Bench alike.

IX. LEGAL ASPECTS OF STAGE CARRIAGE LICENSING IN INDIA, by *P. Leelakrishnan*, 1979. (Published by Sterling Publishers Private Limited, AB/9 Safdarjang Enclave, New Delhi). Price Rs. 90.

The jural postulates of the old competitive order have to yield place to the new values of developmental jurisprudence. Conformably to the concept of a welfare State, Government has adopted a system of mixed economy, rather piebald, and has also resorted to a system of licensing so that public interest does not suffer by reason of private individual enterprise or profit-oriented competitive activities in various fields. In this process, stage carriage licensing has become a rapidly developing field of modern law. All transport vehicles before they can be plied in any public place require permits and even Government vehicles, if put to commercial use have to possess permits. The Motor Vehicles Act, 1939 carries a number of licensing provisions the interpretation and implementation of which has given rise to a mass of case law. The instant book gives a survey of such case law constituting an inductive study in the administrative law on the stage-carriage licensing provisions of the Motor Vehicles Act of 1939. The concept of State monopoly introduced into the law relating to motor vehicles has led to conflict of interests by reason of the State's dual role as regulator as well as an entrepreneur.

The book is divided into seven parts and fifteen chapters. Part I provides a general introduction to the subject and examines the impact of the permit system on the right to equality and the right to carry on business. Part II considers the substantive safeguards available at the different levels of the licensing system, the fixation of quota of permits in a region or a route, decision on individual claims for permit and imposition of conditions on permit. Part III contains an evaluation of the mechanics of administrative and judicial sanctions and their efficacy against violations of permits. Part IV points out how far procedural fairness can be observed in the licensing process by scrupulously observing the norms as to freedom from bias, opportunity to the concerned persons to be heard and giving reasons for decisions. Part V deals with the nationalisation process highlighting the procedural and substantive standards expected to be observed by the State when it takes over the stage-carriage business. Part VI is devoted to the power of the State to frame rules and issue directions pertaining to the licensing process. Part VII contains the main conclusions and suggestions.

In Chapter XV which formulates the author's conclusions, it is observed that prior fixing is an important preliminary step in the stage carriage licensing process, involving decision prior to issue of permits whether there should be a new route and what should be the quota of permits to be issued in the route and that consideration of substantive matters mentioned in section 47 (1) of the Motor Vehicles Act is necessary. His plea that the adverse effects of prior fixing upon the interests of existing operators can never be overlooked is quite just. All in all judicial attitude in regard to the licensing process

is what is stated in *Abdul Rahman* v. *Transport Appellate Tribunal,* A.I.R. 1978 S.C. 949, by the Supreme Court that under section 47 the interest of the travelling public is the dominant consideration in the grant of permits and no order in exercise of powers under Article 226 or 136 of the Constitution will be passed if the public is likely to suffer.

The instant book is a revised version of the author's doctoral thesis. It is a comparative study of the subject. The leading decisions on the several aspects of the licensing process have been taken note of. The author's presentation is at once lucid and luminous. The book should be useful to students, teachers of administrative law, administrative tribunals and lawyers.

X. CHILD AND THE LAW PUBLICATION UNDER THE AUSPICES OF THE INDIAN LAW INSTITUTE, New Delhi, 1979. (Publishers: N. M. Tripathi Private Limited, Bombay). Price Rs. 30.

1979 is the International Year of the child. The nation's children are a supremely important asset. The children of today are the citizens of tomorrow. It is but proper that the child should be the focal point for all socio-economic planning. It is a disturbing fact that India has the largest child labour force in the world and juvenile crime accounts for about five per cent. of all cognizable crimes in the State. It is therefore pertinent to inquire what protection and treatment are enjoyed by or accorded to children by the laws of the State, in what directions they operate, how far they are effective and efficacious and what more has to be done. This is a field for social workers and for lawyers in particular to investigate. It is gratifying that a team of the faculty members of the Indian Law Institute undertook a study of "Child and the Law" critically analysing the existing laws relating to children and examining the case law in a purposeful manner identifying the gaps revealed with a view to necessary action.

The study has brought out a few notable points, such as that only a few statutes were enacted during the pre-Independence period relating to child and that since independence the State has shown awareness of its responsibilities towards children and enacted a large amount of legislation. The study further records that, apart from minor deficiencies, basically the laws are adequate. If field work had also been done into the working of these laws the study would have been more complete but as stated in the Preface the task was beyond the purview of the work.

The book has examined nearly 250 statutes, Central and States, concerning children. The lay-out is in seven Parts: Introduction; Laws relating to Child Labour; Child Welfare; Criminal Law; Family Law, Contract and Torts; and Testimony and Suits. A Table of I. L. O. Conventions and Recommendations is also given.

That in ancient India child marriage among Hindus was not common (page 113) derives support from the 10th mandala of the Rig Veda describing the marriage of Soma and Surya. That under the law as it is today child marriages are still possible cannot be denied. It is certainly a loophole in the marriage law. The argument that since the methods of keeping age records are radimentary declaration of child marriages to be void in such a situation may lead to social rift and family antagonism and create, in some cases, the problem of illegitimate children and law has, therefore, to move slowly in that direction (page 128) is realistic and just. The survey of the legal position under the several Acts is marked by careful analysis and lucid presentation. It would be found quite useful and dependable by all who are devoted to the cause of the child and its welfare.

XI. THE INDIAN LEGAL SYSTEM (Published under the auspices of the Indian Law Institute, New Delhi) 1978. Edited by *Joseph Minattur*. (Publishers: by N. M. Tripathi Private Limited, Bombay). Price Rs. 45.

The book seeks to provide "a wide-ranging but brief survey of Indian law dealing with its various branches" which would be helpful to the reader in India but more so to, "the foreign scholar, who browses in a law library

or comes all the way to this country in search of light". The branches of law surveyed in the book cover subjects like. Nature of the Indian Legal System, Constitutional Law, History of Courts and Legislatures, Judicial System and Legal Remedies, Legal Profession and Legal Education, Civil Procedure, Criminal Procedure, Law of Evidence, Criminal Law, Administrative Law, Labour Law, Law of Taxation, Economic Laws, Commercial Law, Company Law, Law of Property, and Family Law. The work is contributory and the contributors include academic scholars, a few Judges and others.

The Editor's observation that "one can hopefully assume that if an Indian civil code is adopted soon, it may tend to guide and inspire legislators in the neighbouring states" (Introduction page xviii) seems to be more optimistic than realistic as to early emergence of a Uniform Civil Code, having regard to the manner and the tempo in which national unity and integration is being promoted and is working out in practice since 1950. It is not clear why land law referred to as a *core* subject for study at page 72 does not find inclusion as a subject of the survey in the instant work. On page 11, it is observed that the principle of our system of Criminal Law and Procedure is not to find out the truth, whether the accused is guilty or not. It is difficult to follow this statement. It may be that the inquisitorial or accusatory system would have been more suitable to get at the truth than the adversary system and section 106, Evidence Act, cannot be used to dilute the onus on the prosecution of proving guilt beyond reasonable doubt. But that does not mean that the adversary system is indifferent to find out the truth as to the guilt or innocence of the accused. The reference to Stephen's comment on the provision in section 165, Evidence Act, that the section is intended to arm the Judge with the most extensive power possible for purpose of getting at the truth and the writer's gloss that "the Indian Judge appears to be invested with ample powers under the Act to get at the truth and form his own conclusions" (Introduction page xv) bear this out. The statement at page 163 that the Andhra Government appointed a Committee in 1936 regarding legal education is an obvious error since there was no Andhra Government at that time. In the Chapter on Family Law at pages 641-642 the reference to the minimum age of marriage for males and females among Hindus as 18 and 15 respectively under the Hindu Marriage Act, has to be modified and read as 21 and 18 in the light of the amendments made by the Child Marriage Restraint (Amendment) Act II of 1978. There seems to be no mention either in that chapter or under any other title to the great transformation regarding property rights of Hindu women achieved under section 14 of the Hindu Succession Act. These are however, only minor matters and do not detract from the value of the publication. That a book delineating the outlines of Indian law is now readily available is highly satisfactory. The book should find a place in every library.

XII. CHEQUES IN LAW AND PRACTICE, by *M. S. Parthasarathy*, Third Edition, 1979. (Published by N. M. Tripathi Private Limited, Bombay). Price Rs. 45.

The books deals with a subject of great importance not only to the commercial world but to all, and of special and growing value in the context of a developing country like ours. There has been recently a considerable expansion in the geographical coverage and volume of commercial banking activity. The inculcation of the banking habit is being carried to small towns and even into remote villages. As to the merits of the cheque system, long ago it was observed. "The wit of man cannot devise a thing better calculated for circulation. The value of the writing, the assignable quality of it, and the party to whom it is intended has only to read it, need look no further and has nothing to do with the private history behind it". A cheque, though a bill of exchange is always drawn on a specified banker and is payable on demand. It is true that in the United States of America in particular various electronic devices are used such as the automated clearing houses and centres but still there is a long way to go before payments would be settled through electronic systems. Naturally, in India many more years will have to pass before the present practice is superseded by any electronic paying system. In the meanwhile the cheque system as a simple and convenient means of payment remains.

The book is divided into four Parts:

Part I deals with Drawing, Issue and Negotiation; Part II with payment; Part III with collection; and Part IV with certain analogous instruments like Bankers' Drafts, Pay Orders and Travellers' cheques. The Appendix furnishes specimens of cheques, bills, etc. The book has taken into account decisions rendered since the last edition. Regarding the liability of a banker in respect to a cheque where the drawer's signature has been forged, the decision in *State Bank of Hyderabad* v. *The Andhra Pradesh Sports Council*, (1978) 2 A.P.L.J. 403, holding that a cheque on which the signature of the constituent is forged is not a cheque at all and negligence of the constituent or the good faith of the bank is no defence to a claim for the recovery of the amount debited upon a forged cheque, could have been included. It is gratifying that by and large all important legal decisions, English and Indian have been noticed to elucidate and substantiate the principles stated. The book will serve as an efficient and dependable guide to bankers, businessmen and lawyers.

XIII. LAW OF PRESUMPTION AND ADVERSE INFERENCE (CIVIL AND CRIMINAL), by *B. K. Amin*. (Published by the Western Law House, Ahmedabad-380 001). Price Rs. 27. The book is in effect one dealing with sections 105 to 114 of the Evidence Act. Sections 105 to 112 (both inclusive) cover presumptions of law. Section 113 is outdated and has lost its importance. Section 114 is verily a storehouse of all presumptions of fact. The law is discussed in nine chapters. Chapter I serves as an Introduction. Chapter II deals with section 105 and the burden of proving that the case of an accused comes within exceptions; Chapter III with section 106 and the burden of proving fact especially within one's knowledge; Chapter IV with section 107 and the burden of proving death of person known to have been alive within thirty years and section 108 on burden as to person not heard of for seven years. Chapter V involves section 109 and the burden of proof as to relationship in the cases of partners, landlord and tenant, principal and agent. Chapter VI covers section 110 and burden of proof as to ownership; Chapter VII is devoted to proof of good faith in transactions where one party is in relation of active confidence. Chapter VIII deals with birth during marriage, conclusive proof of legitimacy and section 112. Chapter IX adverts to section 113 and proof of cession of territory and to section 114 and presumption as to existence of certain facts. In discussing the case of common disaster and survivorship at pages 49-50, the statutory presumption enacted in section 21 of the Hindu Succession Act, 1956 that the younger survived the elder has not been noticed, nor the decisions in A.I.R. 1963 Punj. 66; A.I.R. 1968 Guj. 212 and A.I.R. 1970 Mys. 87. There are a number of typographic and other mistakes which with some care could have been avoided. The reference to A.I.R. 1980 S.C. 42 at page 156 is obviously a mistake as we are still

in 1979. On page 107, line 20, the words "much to do about nothing" must be "much ado about nothing". In so far as the book is a special study of a particular topic it should prove useful to lawyers and students alike.

XIV. SOCIETY, STATE AND THE LAW, by *B. A. Masodkar*, 1979. (Published by N. M. Tripathi Pvt., Ltd. Bombay.) Price Rs. 45.

The subject of study in this book is a fascinating one albeit "thorny". The interlinking between Society, State and the Law is so very fine that one can "scarce feel the slender little line". One cannot think of Law sans State or of both apart from Society. Out of Society emerges the State. It is Society that nourishes all its arteries. When however, the State comes into its own and gathers power it assumes sway over all its interacting social fields. Thus the State as we see it has become a distinct, organised, powerful conglomeration of people living in Society. Law, the *sine qua non* of all orderly social life forms the justification for the State and gives sanction to it and eventually seeks sanction from it as the fountain-head of all laws. Differences in social milieu generate different types of creative forces giving rise to different patterns of State, monarchy, democracy, socialist or any other form of State. An understanding of all these phenomena and in particular the placement of the State between Society and the Law and its role in the affairs of the Society and the Law can alone make the study of Sociology and Jurisprudence meaningful. The present book discusses these questions in all their ramifications. The discussions run through eleven chapters entitled—This Trouble-torn World; At the Crossroads; From Chaos to Cosmos; Constant Constructs of Society and its State; Consent, Contract, Coercion or Consensus? Land—The Dear Mother Earth; Power: Complex of Relations: Sovereignty; Law: Language and Link of Power; Force: Prison, Police and Posse; Party: Democracy and Technocracy; Society and the State. In Chapter I we are made to realise how the world has now become a trouble-torn world and the State a vulnerable apparatus capable of being shaken by forces of violence, susceptible to its capture by its more organised wings and how a scrutiny of some of the basic premises of the world of states has thus become necessary. In Chapter II it is pointed out how our institutions established for beneficent premises are affected by in-built decay and are constantly perverted, how individualism, liberty, freedom, right and obligation, equality, and society with claim for validity by the State as the necessary human adjunct are constantly in issue suffering organised attack, and how our life's speed is growing and so also its complexity, so much so it is difficult to conceive of organisations like the State which man discovered long back to remain unaffected by such moving impact of change. The author notices how laws are made and unmade, how people in power always seek more and yet more power, how public opinion is ordered and organised and how laws are bent and distorted to subserve selfish ends and personal aggrandisement. The author's exploration of the views and attitudes, trends and tendencies adopted or manifested from the earliest times constitutes a scholarly and luminous review of absorbing interest and perceptive analysis opening new vistas for enquiry and thinking in depth.

XV. PRESIDENT'S RULE IN THE STATES. (Publication under the auspicious of the Indian Law Institute, New Delhi.) 1979 Edition. (Publishers: N. M. Tripathi Pvt. Ltd., Bombay.) Price Rs. 25.

Constitutional Law verily constitutes the twilight zone between politics on the one hand and law as such on the other and any topic pertaining to it is bound to command more attention than a topic on any other branch of law. Though the President's constitutional power to take over the administration of a State is placed under the Emergency provisions with the implication that it is to be rarely used, ironically enough it has so far been invoked on about 52 occasions. Under Article 356, President's rule can be imposed over a State if he is satisfied "that a situation has arisen in which the government of the State cannot be carried on in accordance with the

provisions of the Constitution." For this purpose the Governor of the State concerned makes a report on the factual situation and gives his own assessment and suggestions. It is obvious that the President's satisfaction must be *bona fide* and not motivated or based on devious reasons. In actual practice the use of Article 356 has become in many cases highly controversial. The imposition of President's rule in Kerala to get rid of the communist ministry headed by Mr. E. M. S. Nambudripad while he was having a comfortable majority in the Legislature is one such case. Equally Governor Sampurnanand's refusal to give any chance to non-Congress ministries in Rajasthan looked like a dubious exercise of the constitutional power. It is familiar knowledge how within a few weeks of the advent of the Janata ministry at the Centre. President's rule was imposed over nine States to hold fresh elections on the ground that the catastrophe that had overtaken the Congress party in the elections to the Lok Sabha showed that the Congress Governments in the concerned States had no longer the backing of the people and that the legislatures had lost their credibility with their electorates.

The book under review is a closely reasoned study in depth of the Presidential rule in the States from the start of the Constitution down to the present times. The observation that the President's rule provisions were partly a continuance of the strategy of Government used during the British Empire and partly intended as a statutory marginal safety valve if there were a serious break-down of the constitutional machinery in a State and that the power has however been interpreted and used by each succeeding administration in its own way (see page 13) is a just and acceptable assessment. Equally just is the statement that "the Janata Party's extensive use of the President's rule provisions within weeks of its coming into power reinforced the view that the power under Article 356 could be used for almost any purpose by any government" (page 102). Apart from giving a chronological account of instances of Presidential rule and the circumstances under which in each case it was imposed laying bare the possible motivations behind the same the book reveals a valuable study of such aspects as political interpretation of Article 356, President's rule and the Courts and President's rule and Parliament. The book leaves us with the conviction that by and large the President's power under that Article is an unusual power used by the Union Government in an unusual way.

XVI. THE SUPREME COURT UNDER STRAIN: THE CHALLENGE OF ARREARS: (Publication under the auspicious of the Indian Law Institute, New Delhi, 1978.) (Publishers: N. M. Tripathi Pvt. Ltd., Bombay.) Price Rs. 25.

Providing instant justice is rare in real life and is found only in story books. An ideal judicial system is inspired by the twin objectives of securing inexpensive justice in the real and substantial sense as well as speedy justice to the litigants who are required to resort to Courts of law. The problem of arrears arises because of litigative slow motion due to a variety of reasons and a litigant has to wait for a considerable time before his case is heard giving rise to the reproach that justice delayed is justice denied. The problem of arrears in Court exists in many countries but that is no consolation to those who suffer. The problem is linked with our notions of justice. When such arrears accumulate in the Supreme Court itself and they go on increasing every year it rightly becomes a matter of grave concern requiring effective attention if the judicial system is not to break down. The instant monograph examines the problems of arrears facing the highest Court of the country in all their aspects sifting all the available data and has made valuable suggestions.

The book consists of five Chapters. Chapter I highlights the fact that the Supreme Court was given a very wide jurisdiction and it has itself endeavoured to reduce its jurisdiction by itself juristic interpretation. Chapter II deals with the challenge of arrears which started with the Court handing over to itself a large volume of arrears. Chapter III considers Staff, Finance and Procedure. Chapter IV is devoted to Wages and Means of Dealing with Arrears. Chapter V discusses the Chal-

lenge and the Crisis and gives Concluding Comments. There are three Appendices: Appendix I gives the constitutional provisions relating to the Union Judiciary; Appendix II the Workload of the Supreme Court and Appendix III various statements and miscellaneous matters. It is pointed out that the first serious attempt to consider the problems of the Supreme Court was made by the Law Commission in its Fourteenth Report, but the suggestions were only piecemeal. The strength of the Supreme Court was increased in 1956, 1960 and in 1978 but that has not had any appreciable impact. The Law Commission had at different times suggested that civil and criminal matters should be brought before the Supreme Court only where a substantial question of law of public importance which needs to be decided by the Supreme Court is involved. This suggestion has been adopted as regards civil matters only but has not been followed in regard to criminal matters. Two suggestions in particular made in the book deserve serious attention: (1) to reduce the jurisdiction of the Supreme Court by taking away the fundamental rights original jurisdiction; (2) to reduce the appellate jurisdiction of the Supreme Court by restricting it to matters of law of substantial public importance that require decision by that Court. Another interesting suggestion is that the Supreme Court's work must be divided into two separate divisions, the first attending to constitutional and administrative law matters and the second serving as an appeal Court dealing with normal civil and criminal appeals. A very disquieting finding is that the strength of the Supreme Court would have to increase by three to four hundred per cent. if all the workload is to be cleared and no further arrears are to be created (page 105). Whether one agrees with the finding and the suggestions made or not one thing is quite clear that the possibility of the Supreme Court constituted as at present clearing up the growing arrears is very remote, and radical measures will have to be adopted to tackle the problem of arrears.

XVII. MULLA ON THE SALE OF GOODS ACT AND THE INDIAN PARTNERSHIP ACT, Eighth Edition (Students' Edition), by *J. H. Dalal*, 1979. (Publishers: N. M. Tripathi Private Limited, Bombay). Price Rs. 20.

Mulla's books enjoy a remarkable reputation of their own for crisp and precise statements of law whatever be the subject dealt with whether of substantive or procedural law. Most of his books have become classics. Many of them have students' editions which serve as dependable guides for students. The present work is one of them. It provides a sectionwise commentary of The Sale of Goods Act and the Indian Partnership Act. In the present edition, various trade terms used in the world of commerce have been explained as they have become part and parcel of the law of sale of goods. A few model questions are also given at the end of each chapter enabling a student to know the extent of his grasp of the subject and its basic principles. The book has been revised and brought up-to-date adding in the process a number of cases reported since the publication of the previous edition. The notes to the sections are in simple language. The book is bound to serve the students well and be of great assistance to them.

XVIII. FOREIGN EXCHANGE REGULATION ACT (*XLVI* OF 1973), with rules, Notifications and Forms by *R. B. Sethi*, 1979. (Publishers: Law Publishers, Allahabad-211 001). Price Rs. 40.

The Foreign Exchange Regulation Act, 1973 is a consolidating and amending Act. Out of the 81 sections of the Act about 57 sections have been taken from the earlier Act of 1947, almost verbatim. Of the remaining 24 sections 10 are concerned with procedural matters, offences and penalties. Only 14 sections have made notable changes. In view of much of the old Act being incorporated in the new the case law under the old Act continues to have relevance and importance under the new Act as well.

The object of the Act is to facilitate the preservation of the national economy and the maintenance of the stability of the country's currency system. Some of the provisions

A COMMENT ON P. M. KUPPA SAH v. RAJARAM SAH REPORTED IN (1979) 1 M. L. J. 498: 92 L. W. 165: (1979) 2 R.C.J. 183.

By

A. D. C. GURUSAMY, B.A., B.L., *Advocate, Madurai.*

In the above reported judgment, the landlord put his belongings, in a portion of the building, locked it up and kept it with him. The other portion of it was in occupation of the tenant. He filed an application under section 10 (3) (*c*) of the Tamil Nadu Buildings (Lease and Rent Control) Act, seeking eviction of the tenant on the ground of additional accommodation.

The question arose in this case whether physical occupation is a *sine qua non* for the maintainability of the application. The Chief Justice construed the word "occupation" to be synonymous with the word "possession". In paragraph 9 of the reported judgment the learned Chief Justice observes: "It was in this context that the question arose whether the petition was maintainable without the landlord being in physical possession and occupation ...." Again in paragraph 11 the Chief Justice observes: "That possession is nine points of law is an ancient adage in Jurisprudence. Possession may be physical possession or juridical possession. It is common ground that the landlord kept the premises *vacant* for one year and suffered loss of rent towards such portion of the building".

The Chief Justice referred to a Division Bench judgment in *Accommodation Controller* v. *Rukmani Ammal*[1]. In that case the question arose whether "occupation" referred to in clause 3 (10) (*c*) of the Act should be actual physical occupation *all the time*. The landlady stated in that case that her daughter was living in a portion of the building. The Division Bench disagreed with the view of Justice Alagarsami but at the same time pointed out that "occupation" may not be physical, but it does not follow that the owner should actually reside in a portion of the house *all the* 24 *hours in a day*. The Division Bench finally came to a conclusion that "occupation" for the purpose of section 3 (10) (*c*) may well be occupation where the *owner resides in a portion of the house off and on*, and most of the time keeps it locked. The question is one of intention as disclosed by the act of user of the portion of the house.

After relying on the judgment of *Accommodation Controller* v. *Rukmani Ammal*[2], the learned Chief Justice construed the words "possession" and "occupation" as alternative expressions bearing the same meaning and observed as follows at page 501 in (1979) 1 M.L.J.:

"As Jurisprudence contemplates juridical possession as the nearest equation of physical possession, I am of the view that, in a case where the landlord keeps his things in a portion of the premises, which was vacated after he gave notice of termination of tenancy, and keeps it locked up and under his control, and is in legal possession thereof, then it should be held that the intention of the landlord was to keep it in his physical possession, and this satisfies the requirements under section 10 (3) (*c*) of the Act".

In this context it is relevant to read the text of the clause 10 (3) (*c*) of the Act,—

"(*c*) A landlord who is *occupying* only a part of a building, whether residential or non-residential, may, notwithstanding anything contained in clause (*a*), apply to the Controller for an order directing ay tenant *occupying* the whole or any portion of the remaining part of the building to put the landlord in *possession* thereof, if he requires additional accommodation for residential purposes or for purposes of business which he is carrying on as the cae may be".

The right approach is to enquire what meaning we can give to the ground "occupying" and the noun "possession" occurring in the text of the above clause 10 (3) (*c*) of the Act.

In *Mangal* v. *Rattno*[3], while interpreting the word "possession" the Supreme Court observes as follows:

1. (1971) 84 L.W. 90 : A.I.R. 1971 Mad. 342.
2. (1971) 84 L. W. 90 : A.I.R. 1971 Mad. 342.
3. (1968) 1 S.C.J. 487 : (1967) 3 S.C.R. 454 : A.I.R. 1967 S.C. 1786 at page 1790.

"Thus, three different meanings are given; one is the state of owning, the second is having a thing in one's own hands, and the third is having a thing in one's own power. In a case where property is in actual physical possession, obviously it would be in one's own hands. If it is in constructive possession, it would be in one's own power. Then, there is the third case where there may not be actual, physical or constructive possession and, yet, the person still possesses the right to recover actual physical possession or constructive possession; that would be a case covered by the expression 'the state of owning'".

In *R. Narasimhachari* v. *Andalammal*[4], the Division Bench of our High Court pointed out the myriads of laws as to the meaning of the word "possession" while considering the content, weight and scope of the right of a Hindu widow under the Hindu Women's Rights to Property Act, 1937 and the impact of the later codified law under the Hindu Succession Act, 1956 over it after it came into force. The Division Bench (in the judgment of Justice Ramaprasada Rao as he then was) came to the conclusion that "possession" contemplated under section 14 (1) of the Hindu Succession Act may be in any form recognised by law.

The meaning put on the word "possession" under section 14 of the Hindu Succession Act, would be no guide to the meaning of the word "possession" under the provisions of the Tamil Nadu Buildings (Lease and Rent) Control Act. In *Ram Naram* v. *The State of U. P.*[5], the Supreme Court observes:—

"It was rightly pointed out that it is no sound principle of construction to interpret expressions used in one Act with reference to their use in another Act. The meanings of words and expressions used in an Act must take their colour from the context in which they appear".

Statutes are said to be in *pari materia* when they deal with the same person or thing or with the same class of persons or things and I would submit that the construction which has been put upon an Act of similar scope on similar subjects, even though the language may be different may, for similar reasons, be referred to. Hence the word "occupation" used in clause 13 (1) (*g*) of the Bombay Rents, Hotel and Lodging House Rates Control Act, interpreted by the Supreme Court in *R. P. Mehta* v. *I. A. Sheth*[6], is instructive. The Supreme Court approves the observation of the Bombay High Court as stated hereunder:—

"Indeed the expression "occupation" occurring in clause (*g*) means possession followed by actual occupation while for the purpose of clause (*hh*) what is necessary is possession for the purpose of demolition. "Occupation" within clause (*g*) would include "possession" as it is obvious that one cannot occupy unless one is able to possess,..............

In *Krishanlal Ishwarlal Desai's case*[7], this Court (Supreme Court) said in connection with the provisions of section 17 (1) of the Act:

"What is, however, clear beyond any doubt is that when the possession is obtained in execution it must be followed by an act of occupation which must inevitably consist of some overt act in that behalf ......"

The words "occupy", "use" and "possess" have got distinct and different connotations under the Rent Control Act and they have to be understood only in the popular sense. When we read sections 3-A (1) (*b*) and 10 (3) (*a*) (*ii*) which deal with non-residential building intended for the *use* of vehicle or adapted for such *use* the draftsman adopted the word *"use"*. The meaning of the word "occupy" is made all the more clear when we read section 3 of the Act so far as it is relevant to the point in question.

"3. *Notice of vacancy*.—(1) (*a*) (*i*) Every landlord shall within seven days after the building becomes vacant:—

(*a*) by his ceasing to occupy it, or

4. I.L.R. (1979) 1 Mad. 1 : (1978) 2 M.L.J. 520 : 91 L. W. 598 : A.I.R. 1979 Mad. 31.

5. 1956 S.C.J. 725 : 1956 S.C.R. 664 : A.I.R. 1957 S.C. 18 at page 23.

6. (1965) 2 S.C.J. 608: (1964) 8 S.C.R. 1 : A.I.R. 1964 S C. 1676 at page 1679.

7. C.A. No. 804 of 1962 (S.C.).

of the Act are not easy to construe; for instance, sections 12 and 13 giving rise to conflicting views. Another complicating factor is the interlinking between the provisions of this Act and the Customs Act. The instant book provides commentaries sectionwise drawing attention wherever necessary to the corresponding provision of the earlier Act. There are three Appendices. Appendix A gives the Rules framed under the different provisions of the present Act. Appendix B contains extracts from allied laws. Appendix C sets out the Notifications issued by the Central Government and the Reserve Bank of India from time to time. Case-law has been taken into account but it is not clear why decisions like—*Union of India* v. *Vijay Chand Jain,* A.I.R. 1977 S.C. 1302, holding that the expression currency in respect of which there has been contravention would cover the sale proceeds of foreign currency sale of which is prohibited by the Act, or that in *Bhaskaran Pillai* v. *Enforcement Directorate,* 1978 Ker.L.T. 436, deciding that the Enforcement Authorities are competent to retain the documents seized under section 38 for a period of one year on the grounds stated in section 41 (*i*) and (*ii*) of the Act and hence if any proceeding under section 51 has been commenced, the Authority can retain those documents until the disposal of the proceedings including, if any, before the Appellate Board and the High Court have not been adverted to. The author's exposition of the law is fairly helpful and the book should be of use to the practising lawyers, the concerned Government Departments and others.

XIX. Allied Legislation affecting Direct Taxes, by *H. R. Gupta.* (Published by Legal Study Circle, Delhi-110 006). First Edition 1979. Price Rs. 60.

It is stated in the Preface that though legal provisions relating to direct taxes are lucid the application of the provisions is not always easy. It therefore becomes necessary to refer to the legal concepts as found in allied legislations which have an impact on direct taxes. Fifty-three such legislations are exposed in this work right from the relevant provisions of the Constitution to the Judicial norms of Muslim law. These legislative provisions are of two kinds: (1) those which have a bearing on direct taxes; and (2) those which are useful in solving day to day legal problems. They cover *inter alia* provisions with respect to the law of evidence, limitation, pleadings; law pertaining to Hindu, Societies and Companies; legal propositions given for Labour Laws; and discussions of Commercial and Penal Laws, The book is just a collection of various provisions. The amendments made by the Forty-second and Forty-fourth Amendments to the Constitution in the provisions relating to fundamental rights and directive principles are not noticed. The statement that Muslim marriage or *nikah* means carnal conjunction (page 424) is debatable. The work may prove a useful Referencer to members of the Bar and Chartered Accountants.

XX. Selected Decisions of the Gujarat Civil Services Tribunal, Volume II (1978, Part I), 1979. (Published by *Vora Prakashan,* Ahmedabad-380 001). Price Rs. 18.

The first volume of the work has been reviewed in (1979) 2 M.L.J. (Journal) page 37. The work is designed to publicise decisions in regard to questions relating to service matters and discipline rendered by the Gujarat Civil Services Tribunal for being followed by the heads of departments and concerned officers so as to bring them to the notice of non-gazetted officers and Panchayat employees in particular. In the volume under notice the important cases decided by the Tribunal during 1978 with appropriate head notes are published. The features marking the first volume are maintained in this volume also.

XXI. 1978 INSURANCE CASES (LIFE AND NON-LIFE), by *M. N. Srinivasan,* 1979. (Published by Ramanuja Publishers, Bangalore-560 003.) Price Rs. 3.

The cases included cover about eleven heads. Public Service Vehicle Owner's Duty to the Public; Forum for Trial of Claims for Compensation; Disclosure of Material Facts; Voluntary Duty; Application of *res ipsa loquitur* principle; Amendment of section 95 in 1969 whether retrospective; Liability to Passengers; Driver acting contrary to instructions; Driving motor vehicle without driving license; Insurer liable; Method of assessing Compensation and Repudiation of life policy. The decisions are grouped under these heads; the core facts are given and the emerging conclusions are stated. The author's treatment, necessarily brief, is nevertheless lucid. The booklet is a welcome publication.

XXII. SOONAVALA'S THE SUPREME COURT ON INDUSTRIAL LAW, 1950-1978. Second Edition by *D. S. Chopra,* 1979. (Published by N. M. Tripathi Private Limited, Bombay.) Volume II. Price Rs. 115.

The first volume has been reviewed in (1979) 2 M.L.J. (Journal) pages 28-29. The second volume is divided into 18 chapters. Chapter I deals with Industrial Employment (Standing Orders) Act, 1946; Chapter II with Beedi and Cigar Workers (Conditions of Employment) Act, 1936; Chapter III with Contract Labour (Regulation and Abolition) Act, 1970; and Chapter IV with Banking Companies Act, 1949; Chapter V covers Production Bonus; Chapter VI Profit Bonus; and Chapter VII Other Bonuses. The Payment of Bonus Act is considered in Chapter VIII. Chapter IX is devoted to Suspension; Chapter X to Lay-off; Chapter XI to Discharges simpliciter; Chapter XII to Retrenchment; Chapter XIII to Termination of Service upon Transfer or Closure of the Undertaking; and Chapter XIV to Dismissal or Discharge for Misconduct; Chapter XV deals with Jurisdiction of Industrial Tribunals when adjudicating over disputes as to Termination of Service; and Chapter XVI with Retrenchment; Chapter XVII consider; Other Statutes such as Additional Emoluments (Compulsory Deposit) Act, 1974; The Factories Act, 1948; Employees' Provident Fund Act, 1952; Industrial Employment (Standing Orders) Act, 1946; Minimum Wages Act, 1948; and Trade Unions Act; Chapter XVIII the last chapter adverts to miscellaneous things. Under the caption 'Settlement under Industrial Law', a number of 1979 decisions are noticed in the Addenda.

A great merit of this work is a thorough analysis of the Supreme Court decisions under each of these headings, indeed a prodigious task. As has been often said Industrial Jurisprudence in this country has chiefly developed out of the decisions of the Supreme Court over the years since the advent of Independence. The instant book should prove to be a useful and dependable guide to all who are concerned with or deal in labour and industrial law.

CAN THE LEGAL REPRESENTATIVES OF A 'DEBTOR' INVOKE THE PROVISIONS OF THE TAMIL NADU ACT XL OF 1979?

By

V. LAXMANAN, M.A., M.L., *Advocate.*

To me the answer seems to be in the negative.

In support of my view I wish to rely on the definitions in the Act. Section 3 (3) of the Act states that "debtor", means "any person from whom any debt is due". If we turn to the definition of 'creditor' we find it to be an inclusive one. According to section (3) (1) 'Creditor includes his heirs, legal representatives and assigns'. Thus while the term creditor includes his heirs, legal representatives and assigns, the term 'debtor' does not do so and this departure seems to be intentional. If the intention of the legislature had been to rope in heirs and legal representatives nothing could have prevented it from doing so. It is patent that the legislature intended to mean only the original contracting debtor and not his legal representatives.

Further, to requote, *"debtor" means "any 'person' from whom* any debt is due". Then, who is the *person* contemplated under the Act? Section 3 (7) says: "Person" means "an individual and includes an undivided Hindu family, a marumakkattayam or aliyasantana tarwad or tavazhi, but does not include a body corporate, a charitable or religious institution or an unincorporated company or association or any firm as defined in the Indian Partnership Act, 1932". According to the definition, debtor is *a "person" from whom any debt is due.* But in the case of a legal representative he is not the person from whom any debt is due. It is really the estate from which the debt is due. Though there is a person representing the estate, he is not the person from whom any debt is really and actually due. To repeat, it is really the estate of the deceased from which the debt is due. Such an estate cannot be a 'person' as it is only an impersonal entity. So when the estate is not a person, how can the benefits be made available to it through the legal representative? Even otherwise also, the legal representatives cannot label themselves as 'debtors'. Under law after the death of the debtor (we are concerned here only with the 'debtor'), the creditor can proceed only against assets, that is, the estate, of the deceased. That means the legal representatives cannot be saddled with personal liability. When the creditor is denied the right to proceed against the debtor's legal representatives personally, why should the legal representatives be permitted to claim the benefits under the Act? While conferring benefits there can be no one-way traffic. There must be corresponding rights and obligations.

If legal representatives are allowed to come under the protective wings of the Act, it will certainly cause prejudice to the creditors. A creditor might have lent because the borrower was not a "debtor" as contemplated under the Act. If the legal representative, who can be branded as 'debtor' under the Act, is allowed to claim the benefits, to that extent the creditor's interest is adversely affected. The creditor would not have even lent if the borrower had been a 'debtor'. How can the legal representative be allowed to acquire rights to which the deceased himself was not entitled?

The avowed object of the Act as contained in the declaration (section 2) is to give effect to the policy of the State towards securing the principles specified in Article 46 of the Constitution. Article 46 reads: "Promotion of educational and economic interests of Scheduled castes, Scheduled tribes and other weaker sections:—The State shall promote with special care the educational and economic interests of the weaker sections of the people, and, in particular, of the Scheduled castes and Scheduled tribes, and shall protect them from social injustice and all forms of exploitation". The intention is to protect the weaker sections of the people from exploitation. But at the same time we should not forget that all creditors are not exploiters. Many, though creditors, are really "debtors" (Imagine the case of a person who has nothing but his life-long savings of a few thousands which he lends) in such cases if the Act is extended to legal repre-

sentatives, it will definitely affect another member of a weaker section. No doubt some provision is made in respect of some creditors as enumerated in section 4 (*k*). But that is not comprehensive. There are other persons against whom also the operation of the Act has to be curtailed.

When we come to judicial pronouncements on the point, they seem to lay down differently, thus striking a discordant note. A recent judgment of our High Court in *Rajammal* v. *Janaki Ammal and others*[1], rendered by Ramanujam, J., dealing with the liability of a legal representative of an agriculturist says (page 319, para. 7). "Thus it appears to be well-settled that the legal representatives representing the estate of the judgment-debtor though not proceeded against personally can claim the benefits of the Tamil Nadu Act IV of 1938, if they are agriculturists". The Judge relies on the decisions in *Kona Hasan Pathima Bivi* v. *Muhammad Muhaideen Nachiar*[2] and *Nageswarasami* v. *Viswasundara Rao*[3]. The first case deals with the question whether the legal representatives of judgment-debtor can claim the benefits of Act IV of 1938 and the High Court answers the same in the affirmative. In the other case before the Supreme Court, the question was whether the purchaser of an equity of redemption could claim the privileges under the Tamil Nadu Act IV of 1938. Affirming an earlier decision of the Madras High Court in *Perianna* v. *Sellappa*[4], the Supreme Court held that the purchaser could certainly claim the privileges of the Act if he himself was an agriculturist. I feel that while conceding the benefits to the legal representatives they were carried away by the purpose of the Act as expressed by the Division Bench judgment in *Kona Hasan Fathima Bivi* v. *Muhammed Muhaideen Nachiar*[5], that is, to enable agriculturists to retain their property and prevent such property passing into the hands of creditors or execution purchasers. But in the case of non-agriculturist debtors nothing needs to be preserved and the rationale in those decisions cannot be imported into cases arising under the Debt Relief Act, XL of 1979. If such benefits are conferred on legal representatives, then it will be far in excess of the intendment of the Legislature. We cannot enlarge the definition when the legislature has deliberately confined it to a particular person. The 'debtor' under the Act, can mean only the original contracting party and consequently the benefits under the Act cannot be made available to the legal representatives. If they are allowed to take umbrage under the Act, we will be failing to strike a balance between conflicting interests.

---

1. I.L.R. (1977) 1 Mad. 313.
2. (1942) 2 M.L.J. 506.
3. (1953) 2 M.L.J. 252 (S.C.).
4. (1938) 2 M.L.J. 1068.
5. (1945) 2 M.L.J. 410.

(*b*) ....".

The word "occupying" cannot be understood in the sense of "legal possession", when the idea of ceasing to occupy has been attributed to mean keeping the building as vacant under the Act. If the building is kept vacant even then the legal possession is with the landlord. If legal possession is construed as "occupation" then the Act becomes meaningless. Because legal possession means "constructive possession" or "power to possess". Constructive possession means possession through tenant, mortgagee and licencee etc. If such wide meaning is given to the word "occupying" under section 10 (3) (*c*), then possession of the tenant also will amount to "occupation" by the landlord.

The word "occupying" is not at all defined under the Act in question. One of the guide-lines given by the Supreme Court in *Income-tax Commissioner of Andhra Pradesh* v. *Taj Mahal Hotel*[8], is as follows:—

"Now it is well-settled that where the definition of a word has not been given, it must be construed in its popular sense, if it is a word of every day use. Popular sense means, "that sense which people conversant with the subject-matter with which the statute is dealing, would attribute to it".

If the landlord put his belongings, in a portion of the building, locked it up and kept it with him, then at the most it can be said in its popular sense that the landlord keeps it vacant or he is using the building by keeping his belongings. In any event it cannot be said he is "occupying" the building.

In *Raghubans Narain* v. *Government of U.P.*[9], the Supreme Court observes:—

"It is a well-settled rule of construction that where the Legislature uses the same expression in the same statute at two places or more, then the same interpretation should be given to that expression unless the context requires otherwise".

A reading of sections 3, 10, 11 (4), 12 to 15, 16 (1) and 23 clearly indicates that the word "possession" has been used in a popular sense as to mean *"delivery of khas or actual possession"* of a building in pursuance of an executable order. Under section 10 (3) (*c*) itself the word possession has been used in the popular sense as to mean "delivery of actual possession".

In the circumstances the above reported judgment in (1979) 1 M.L.J. 498, seems to require reconsideration.

[END OF VOLUME (1979) 2 M. L. J. (JOURNAL).]

LIBRARY

8. 1972 Tax.L.R. 54 : 82 I.T.R. 44 : (1972) 1 S.C.R. 168 : (1972) 62 I.T.J. 556 : (1972) 2 S.C.J 673 : (1973) 1 M.L.J. (S.C.) 4 : (1973) 1 An.W.R (S.C.) 4 : A.I.R. 1972 S.C. 168.

9. (1967) 2 S.C.J. 214 : (1967) 1 S.C.R. 489 : A.I.R. 1967 S.C. 465 at page 469.

DR. C. P. RAMASWAMI AIYAR
12-11-1879 — 26-9-1966

LIBRARY
OF LAW

BIRTH CENTENARY OF DR. C. P. RAMASWAMI AIYAR*

By

T. V. VISWANATHA AIYAR.

To some, law comes with special and affectionate appeal. They will not allow other interests to share their favourite deity. Theirs is an one-pointed devotion to the law. We have the example of an illustrious lawyer, who after he became a Judge, seeing a copy of Morley's 'Compromise' on the table of his friend, queried whether the latest cases are reported therein?

To some others, law comes as one of many things—public affairs, politics, education, literature, music, sports, social welfare etc. Active practice of the profession and success in it has not been incompatible with success and fame in other fields.

As an outstanding example of the first type, one can mention Sir V. Bashyam Iyengar and of the second Dr. C. P. Ramaswami Aiyar.

When we think of Dr. C. P. Ramaswami Aiyar, many of his unique qualities, attainments and achievements vie with one another for our attention. He was born on the National festival day of lights, illumination and joy (Deepa-aavali), 12th of November, 1879, in the constellation of *Swathi,* one of the brightest in the sky. Even in his death, he was lucky. God vouchsafed to him what he devoutly wished for, *anaayaasena maranam,* without pain, mental or physical, all his faculties intact. He was staying in London at his favourite place, the National Liberal Club of which he was for long a member, to gather authentic material for his proposed book, "A History of My Times". In conversation with an old friend at 11-30 A.M. on the 26th of September, 1966, he simply dozed away sitting erect in his upholstered chair, the visitor lost in admiration of his sparkling wit and charm, little suspecting what had actually happened. It was all that sudden and peaceful.

He was a many faceted gem of scintillating brilliance and lustre. A man of action; the hero of a thousand battles, in Courts of Law, Legislative Chambers or International Fora and in the wider arena of Administration and Public Affairs. Wherever it was, he was the centre of attraction, the cynosure of all eyes, for the charm of his magnetic personality and the dignity of his bearing and the mellifluous flow of his oratory and the versatality of his endowments.

On this occasion, I need not dwell on his being a courageous and intrepid statesman and administrator in Madras and in Travancore, who took the first step—the most important step—in Industrialisation; dignity of labour, social amelioration, self-sufficiency in food or the mid-day meals scheme. Nor shall I detail his subsequent services to the country as an eminent educationist, as Vice-Chancellor of three Universities, one of which he started himself, the Chairman of the Religious Endowments Commission, of the National Integration Council and as a most respected member of the Press Council, nor of his great interest in philosophy, fine arts and literature. In all these, the wide sweep and range of his knowledge and experience, his industry, his mental resilience and equable temper were significantly and decisively in evidence.

Let me now give my attention to his career as a lawyer especially to the period of his domination at the Bar in the Madras High Court. Within 17 years of his entry into the Bar in 1903, he became one of the youngest lawyers to be appointed Advocate-General and that too, from the original side. At the height of his practice, making what was then record earnings, he was called upon to fill the high Office of the Law Member of the Governor's Executive Council, the youngest to be so appointed. You all know the grand success he made of this, how Tamil Nadu is greatly benefitted by it. He resigned before his full term was over and resumed his practice. He appeared in several important cases in the High Court and in the mofussil, but later became fully occupied with the Princes who demanded his professional services and his earnings reached phenomenal heights as their Legal and Constitutional Adviser. He then made a special study of Constitu-

*Summary of the speech of the Author, delivered when presenting a portrait of Dr. C. P. Ramaswami Aiyar to the more than a Century old Madras Bar Association, re-touched and adapted for the present occasion.

tional Law and allied matters. He was the main author of the Commonwealth of India Bill and originator of model constitutions for several States including Kashmir and Travancore.

I was just a few months babe when he entered the profession. It is as well therefore, I speak of those great days of C. P. in the profession between 1903 and 1923 in the words of those who knew him at first hand and could speak to the facts.

Let me begin with Mr. P. Venkataramana Rao Garu who was his compeer at the Bar and became Judge of the Madras High Court and later Chief Justice of Mysore. This is the tribute he pays in the Commemoration volume issued on C.P.'s 81st birth day (November, 1959).

"When I joined the Bar in 1907, Dr. Ramaswami Aiyar was one of the leading practitioners on the Original Side with extensive practice which he maintained till he left the profession of law for politics when he became Law Member with the Government of Madras. I became acquainted with Dr. Ramaswami Aiyar very soon after I joined the Bar and the acquaintance grew slowly into an intimate friendship, when has continued unbroken to this day. It was all my good fortune to be associated with him in the early stages of my career in many an important case on the Original Side. I realised then what a fine and capable Advocate he was and learnt to appreciate his many good qualities. The period during which he practised was one of the brightest in the history of the Original Side, when there were stalwarts among the lawyers like Sri Ethirajulu Mudaliar, Sri V. V. Srinivasa Aiyangar, Sir M. Venkatasubba Rao and Mr. Nugent Grant, and great Judges like Sir C. V. Kumaraswami Sastri, Sir John Wallis and Sir Murray Coutts-Trotter. Dr. Ramaswami Aiyar was a consummate trial lawyer. He was a skilful cross-examiner. He conducted his cases with great adroitness, tact and persuasiveness. As you all know, he is a fluent speaker, with a facility of expression and lucidity of exposition—qualities which appealed to the Judges. With his attractive personality and pleasant manners, he put himself on the best possible terms with the Judges before whom he appeared and he had in a marked degree, the talent of not giving offence. He had a clear grasp of the fundamental principles of Law. He studied his briefs like a student, mastered both the facts and Law bearing on the case and presented them with a neatness and polish which were all his own. His handling of what was known as the Besant case was considered to be one of his best performances. It secured for him the enduring friendship, loyalty and attachment to that great lady. It was in the fitness of things that the Government of the country in due recognition of his abilities appointed him to the high Office of Advocate-General which he held with dignity and distinction till he became Law Member.

His industry, was, and is to this day, phenomenal. In 1929, he reverted to the Bar and immediately thereafter, appeared in an important case with Mr. (later Mr. Justice) Satyanarayana Rao, as junior, before the two eminent Judges of the day, Sir M. Venkatasubba Rao and Sir C. Madhavan Nair. It was a case of *certiorari* and prohibition against the Ministers of the Madras Government. I had the privilege of opposing him. I still vividly remember his brilliant advocacy, the vigour, thoroughness, eloquence, grace and learning he displayed on the occasion.

He was very helpful to, and popular with his juniors. He never failed to express his appreciation of the work of a deserving junior in the presence of common clients unlike some seniors, who, I know, treated their juniors with rudeness; often in the presence of the clients. I have often been the recipient of his praise and he treated me with great kindness and consideration for which I have always felt grateful.

He always had sincere love for the profession and did what he could to improve it, as will be evident from his munificent donation to form the nucleus of a benevolent fund. He was Secretary of the Madras Advocates' Association in 1906-07 and took an abiding interest in its progress. He always adhered to and maintained the highest traditions of the Bar. He is indeed one of the very eminent Advocates of the Madras Bar of whom our State and our country can justly be proud.

His political career was equally brilliant. As Law Member in the Madras Government and later as Dewan of Travancore, he proved himself to be a great and efficient Administrator. The Pykara Project, the Mettur Dam and the Proclamation in Travancore which opened the Temples to Harijans and the many projects of Travancore, are some of the outstanding achievements to his credit. His interests were not confined only to law and politics.

His range is wide......".

This is what Mr. M. Subbaraya Aiyar, one of the principal juniors of Dr. C. P. Ramaswami Aiyar during all those years, has to say:

"I should here set down what we juniors thought of him as a lawyer, having seen him at his briefs. We saw that a man could live greatly in the law as elsewhere. The profession need not mean a greedy angling for clients, the practice of shopkeepers' art, the unseemly conflict over sordid interests. One finds one's own level. If a man had the soul of Sancho Panza, the world to him would be Sancho's world. But if he had the soul of an idealist, he would find (or make) his world ideal. The young practitioner who has yet to learn the ropes should see that the law was a window for looking out on life and destiny, that law and philosophy were not two fields of thought but one. C. P. taught us again and again that the law was a jealous mistress. From his way of cross-examination, we learnt that combination of audacity and calculation assured success and that we should persuade rather than brow-beat. Force of mind, downrightness of speech and the courage to say what we mean and to do what we should on all occasions are the gateways to triumph in life..........On account of the number of Judges sitting in Courts, seniors had no continuous work but Sir C. P. was an exception. He mainly dealt with original side cases and he appeared in almost all the cases in the list. He took careful and accurate notes for cross-examination and used to revise them constantly...... In 1912, a sensational case was filed againt Dr. Annie Besant for the recovery of the custody of J. Krishnamurti and Nityanandam minor sons of G. Narayaniah. This attracted the attention of not merely the Theosophical World but also of the general public, both in India and outside. The case in India was supported and financed by Katherine Tingley, a dissident theosophist. The issues involved were considered to be of much public importance from a social, religious and moral point of view......Throughout the conduct of the case, C. P. showed his judiciousness and admirable clarity of mind. He was never prolix or verbose, as Justice Bakewell said, Mrs. Besant's written statements and addresses were. His concluding address was free from rancour or vituperation such as others, perhaps, would have been guilty of. Yet, it displayed his forensic ability, his gifts of mild irony and sarcasm. For example, referring to the 'initiation' of Krishnamurti, he asked, 'After all what was that initiation'. The Court could deal only with physical phenomena. How can secular Courts take cognizance of an astral voyage to Tibet, during which the soul was in one place and the body in another........ 'If he (the boy) were told that he was a superman, that he transcended human experience, he might grow above normal moral restraints, he might try to justify any action of his thorough relying occultly derived morals.........'. The chief object of education is to bring sunshine to the heart and to dispel moonshine from the head. The course of education prescribed in this case is the very opposite of that '....' But Mrs. Besant, in appreciation of C. P. immediately after the original judgment, wrote......', 'I was fortunate in having, as opposing counsel Mr. C. P. Ramaswami Aiyar, a gentleman whose name for honour stands as high as his reputation for legal learning and ability'. Again after the appellate judgment she wrote in the Theosophist in November, 1913, as follows .... "I have also once more to thank my opponent Mr. C. P. Ramaswami Aiyar for conducting the case in a way that deprived it of features which might have made it well nigh intolerable, for unfailing delicacy, and for constantly remembering that his opponent was a woman, to whom the subject-matter of that suit was necessarily supremely distasteful. His pleading was none the less able and brilliant for the avoidance of any coarse phrase, and, while he did even more than his duty to his client, he never descended into the licence which a counsel of a lower

type would have employed. It is well that at the close of a case so bitterly contested one is able to salute one's opponent with raised rapier, as chivalry demands. But I would rather have Mr. C. P. Ramaswami Aiyar on my side than against me. I have not seen his equal, so far, in the High Court, for readiness of answer and clever presentment of a case, making much of its strong points and covering its weak ones; he also knows what he wants and the way of obtaining it. It is not wonderful that he is overwhelmed with cases. In addition to his legal work, he is constantly engaged in making himself useful to good public causes and his name is ever seen in connection with these. India will have a fine public worker in him, if he fulfils the promise of the present"...... The next case which called for his legal knowledge and ability was the one in which he appeared for the workers against the B. & C. Mills in a Labour dispute which ended in a strike. This was the first case of its kind in Madras. The management had briefed Mr. S. Duraiswami Ayyar and Mr. B. P. Wadia, the leader of Labour, secured the services of C. P.

Next I come to an event which is to the singular glory of Dr. C. P. Ramaswami Aiyar as a Member of the Bar. This is what Mr. V. C. Gopalaratnam has to say about it:

"His magnificent endowment of Rs. 35,000 for the support of incapacitated and indigent members of the Bar still shines as a lone instance of the successful man's sympathy for those whom he had left far behind. Though several other members of his Bar had made far larger income than he not one of them had thought of making such a generous benefaction, either before or even after he did so........ It is all the more creditable that one who had never known want or failure at any time in his life, to whom success came to crown with every effort as a matter of course, without his having to struggle for it, should have found the time and inclination to think of the unfortunate and helpless members of his profession and contribute to their welfare.

Here are two of the anecdotes, connected with the Law from Mr. Chidambaram's (Dr. C. P. R.'s Secretary) book on his master entitled With Profound Respects'. It gives about 170 anecdotes connected with the life of Dr. C. P. Ramaswami Aiyar, Mr. Chidambaram had the singular distinction of having served his master for a record period of over 55 years.

"While Dr. Besant was arguing the famous case, she referred to a certain section in the Guardian and Wards Act. Master interrupted her when she had completed the sentence and said 'My Lord, I very rarely but in when the other side is arguing but now, I have to correct a mistake. I am surprised that the defendant, instructed and advised as she is, by an eminent retired Chief Justice of this Court (pointing to Sir S. Subramania Aiyar, sitting by the side of Dr. Besant) should have referred to a section, which has since been amended. The amended section has no relevance to the point that my learned friend is putting forward". Dr. Besant handsomely accepted the correction.' After the Court rose, Dr. Subramania Iyer called Master to his side and told him, "Ramaswami Aiyar (this was the way in which he addressed Master), I am very sorry, I ought to have brought my knowledge of law up to date....

Master's practice at the Bar reached its zenits during his Advocate-Generalship He had to decline many engagements for want of time.. In those days, there was a rule that Attorneys and Solicitors could engage for conducting cases in Courts only Barristers and not Vakils, as Advocates of today were then styled. Master's reputation as a lawyer rose so high that all the Attorneys in a joint Memorandum requested the Chief Justice to enrol him as a special case as an Advocate and the special enrolment was made. In spite of Master raising his day fee, the Attorneys and Solicitors vied with each other in briefing Master. Money literally poured in."

I hope these few extracts are enough to show the indelible mark the late Dr. C. P. Ramaswami Aiyar has left on our profession, carving out a special niche for himself in the Hall of Fame. He was an inspiring object lesson in what ability, intelligence and industry combined with *bonhomie* and *joie de*

vivre can do for a man. And what a man!

"The elements

So mix'd in him, that Nature might stand up and say to all the world, *This is a man*".

He flashed across the legal firmament in Madras like a brilliant meteor with an almost ethereal effulgence; a prime favourite of the Gods and successive generations of judges and litigants. His brilliant success at the Bar after a hectic period of office in the administration of his province was but one of the several dramatic episodes in his long, varied and eventful life. His great devotion to his revered father, his loyalty and attachment to some friends of his early days are touching qualities in him. We who have known him and been privileged to work with him at the Bar are proud to have enjoyed his patronage, his friendship and his princely hospitality. He has contributed munificently to several charities and education and social institutions.

He was a *Dhira,* a man of action. Courage and loyalty were his watch—words, a Captain insisting on sinking with his ship. He knew the art of living, the joy of giving and noblest of all, the greated joy of forgiving. He was a great gentleman, a flower of Indian culture, an integrated personality, with a sense of humour, with malice towards none and charity towards all.

If certain persons can be said to have been born with silver spoons in their mouths, it can truly be said of C. P. that he was born with a golden spoon in his mouth, and, what is more, that he continued to have it still in his mouth, all his eighty-seven years. He remained an earnest student all through ....a gifted and gracious exponent of the art, technique and aesthetics of life, law and literature.

UNIVERSITY COLLEGE OF LAW LIBRARY